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Constructing A Professional Ethic: *Law School Lessons And Lesions*

Leslie G. Espinoza†

I am pleased to participate in this panel entitled "The Classroom Climate." The course I will travel today, however, will take us from the classroom to the halls and student lounge, around the corner and upstairs to the professors' offices, to the library in the evening and into the night, and finally home to absorb the day and worry about tomorrow. I will endeavor to explore the institutional dynamic of the law school and its effect on women law students. Law school is the forum where all future lawyers develop an understanding of what it means to be a professional and strive to mold themselves into "professionals." Unfortunately, the professional image advanced by the process of law school is too often a vision alienated from interpersonal values. This image both entices and excludes women law students and lawyers.

My remarks will first address the construction of professionalism and its pervasive control over the social and personal development of law students. Second, I will describe the conflict women law students confront in subscribing to professionalism. While the model of lawyering is stressful to all in the profession, the dual messages directed toward women both from within the profession and from our society compound professional pressures leading to internalization of difficulties and gender stratification. Finally, I will offer some specific proposals designed to begin a conversation¹ toward building a nonsexist vision of professionalism.

† Associate Professor of Law, University of Arizona College of Law; Visiting Professor of Law, Boston College Law School, 1989-90; J.D. Harvard Law School, 1977. I would like to thank Catharine Hantzis and my colleagues David Wexler and Jane Silverman for their comments and support; Jean Love and Stephanie Wildman, participants with me on the Classroom Climate Panel at the 20th National Conference on Women and the Law; the women law students who participated in consciousness-raising groups at the University of Arizona College of Law; and Kathryn Torres for her invaluable research assistance and for her friendship.

¹ J. MARTIN, RECLAIMING A CONVERSATION: THE IDEAL OF THE EDUCATED WOMAN (1985).

I. DEVELOPMENT OF PROFESSIONALISM

The law school method, rightly or wrongly, does much more than teach students to read cases and discern legal principles. It constructs the method for appropriate lawyering.² Professional schools as instruments of socialization are a powerful force in the construction of the future contours of the profession.³ Professional schools by institutional design influence the beliefs, values, and personalities of their students.⁴ And while all professional schools exert encompassing control, law schools are perhaps the most invasive of all professional schools.⁵ Professor Audrey James Schwartz writes about law students: "They learn the requirements of the system and turn themselves into the kind of people the situation demands."⁶ Learning law in the professional school is not only learning the system, but also learning to be part of that system.

What image of professionalism is projected? First, the profession takes precedence over all else. Law school places an unquestioning and unquestionable primacy on itself. It soon becomes an all-encompassing enterprise.⁷ While the workload is substantial, the ambiguity surrounding the task becomes the source of the consuming commitment. Is an assignment complete if it is read? read twice? briefed? cross-referenced to a treatise? The Socratic method adds to the ambiguity.⁸ The student aims for a personal sense of knowledge and preparedness and then must confront the real possibility that her focus was not the focus of the soon-to-be interrogating professor. Proponents justify this ambiguous and anticipatory learning as training for the challenge of preparing a case for litigation. Direct guidance is seldom given to students working through this process. Thus, the perception is that being prepared is not protection; being "totally" prepared (whatever that might mean) offers some

² Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 595 (1982) (law school may serve to broadly inculcate students to a social order). See also Riesman, *Law and Sociology: Recruitment, Training and Collegueship*, 9 STAN. L. REV. 643, 656 (1957).

³ Riesman, *supra* note 2, at 646-51. See also Collins, *Functional Conflict Theories of Educational Stratification*, 36 AM. SOC. REV. 1002 (1971). Compare Schwartz, *Law, Lawyers, and Law School: Perspectives From the First-Year Class*, 30 J. LEGAL EDUC. 437, 468-69 (1980) (law school alters cognition processes and the way problems are approached, but does not seem to universally change student attitudes toward values and moral choices).

⁴ Etzioni, *Organizational Control Structure*, in HANDBOOK OF ORGANIZATIONS 650, 670 (J.G. March ed. 1965); F.K. ZEMANS AND V.G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 204 (1981).

⁵ Benjamin, Kaszniak, Sales and Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 252 [hereinafter Benjamin].

⁶ Schwartz, *supra* note 3, at 438 (Professor Schwartz writes from the University of Southern California School of Education).

⁷ Benjamin, *supra* note 5, at 248. See also Manna, *First Comes Love. Then Comes Marriage. Then Comes Law School. The Tricky Part is Managing All Three*, STUDENT LAW., Oct. 1986, at 38; Rohr, Rohr and McKenry, *Role Conflict in Marriages of Law and Medical School Students*, 35 J. LEGAL EDUC. 56, 56 (1985).

⁸ Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School."* 38 J. LEGAL EDUC. 61, 77 (1988).

more solace; but being in a network that knows the system is the best security.

Law school trains students for a kind of amorphous, all-embracing professional dedication. This dedication to the formal process of education, the daily survival in the classroom, as opposed to substantive inquiry and understanding of the subject leads to the second projected image of professionalism—"gutting it out." It is little wonder that this unstated but compelling norm of behavior is competitive and aggressive.⁹ Students and teachers do not share individual perceptions regarding the materials being studied; rather, they posture, second guess, and adopt an adversarial approach to understanding and solving problems.¹⁰ They resolve ambiguity by blindly forging forward armed with argument and position.

The third law school lesson is that of divorced emotionalism. The adversarial approach to cognition leads to trench warfare education. Legal reasoning becomes a highly structured system of barricades resulting in an analytical sterilization of legal problems.¹¹ The rich common law tradition too often becomes a process devoid of humanity.¹² The cases are not stories of real people submitting problems they found irreconcilable to judicial determination—decisions that will greatly affect their lives; they have become irrelevant deceptions hiding the "reality" of black-letter legal principles.¹³ Not only is there a failure to teach interpersonal skills, but students lose the skills they have because they are seen as inconsistent with professionalism. Professor Halpern writes:

Physical and psychological exhaustion are, I think, programmed into the first year. . . .

. . . .

. . . The student is stripped naked, so to speak, so that he may be remade a lawyer. The underlying dynamic, I suspect, parallels the highly structured, controlling, emotionally intense initiatory rites used by the church or the military in the indoctrination of their neophytes.¹⁴

Work like a lawyer, think like a lawyer, be a lawyer.

⁹ Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570, 582 (1983) (the purpose of law school curricula is to train law students for adversarial conflict rather than for negotiation); Siegel, *Presumed Equal*, STUDENT LAW., Dec. 1988, at 22 (argumentative style of discussion in learning).

¹⁰ Menkel-Meadow, *supra* note 8, at 67 ("the metessages of such classes are that teachers know it all, that students must guess at what is temporarily 'right,' and that learning is highly individualized and most often proceeds in a humiliating forum").

¹¹ Bauer, *On Producing Intellectual Giants and Moral Midgets*, LEARNING AND L. Summer 1975, at 12, 12-15; Benjamin, *supra* note 5, at 250; Meltner, *Feeling Like a Lawyer*, 33 J. LEGAL EDUC. 624, 633 (1983).

¹² Menkel-Meadow, *supra* note 8, at 68.

¹³ Cf. Frug, *Re-Reading Contracts: A Feminist Analysis of A Contracts Casebook*, 34 AM. U.L. REV. 1065, 1104-05 (1985); Erickson, *Sex Bias in Law School Courses: Some Common Issues*, 38 J. LEGAL EDUC. 101, 114-15 (1988) (the victim's personal account of rape may be essential to understanding the nature of this crime).

¹⁴ Halpern, *On the Politics and Pathology of Legal Education*, 32 J. LEGAL EDUC. 383, 389 (1982).

The general effect of this professional training on law students is distressing to them and to those who have studied—anecdotally or empirically—the effect of law school on law students. Students become belligerent, hostile, argumentative, and demanding.¹⁵ They become increasingly anxious and internally conflicted.¹⁶ Some of the personality distortion of the law school process may be an illusion generated both by myth and self-report studies from students expressing the rhetoric but not living the reality of the projected role. There is, however, strong indication that the professional role is assumed and lived. Indeed, a study¹⁷ over a four-year period, using psychological tests as opposed to general self-report law school evaluative questions, found dramatic personality changes. The study tested subjects just before they began law school, during law school and for two years after graduation. The subjects revealed feelings of being overwhelmed which in turn led to stress and to depression:

[O]n the basis of epidemiological data, only 3-9% of individuals in industrial nations suffer from depression; pre-law subject group means did not differ from normative expectations. Yet, 17-40% of law students and alumni in our study suffered from depression, while 20-40% of the same subjects suffered from other elevated symptoms.¹⁸

The depression of law students is not exaggerated, but is real, pervasive, and continues after graduation.

The stress caused by excessive workload and ambiguity of task appears to be cyclical. Overwhelming work and insufficient time make it difficult to deal with professional demands, resulting in frustration, a sense of failure, and a loss of personal freedom, leading to even less adequate coping.¹⁹ The reaction to stress is to conform.²⁰ For the first year law student that means work harder—and sleep less, relax less and diminish the interpersonal relationships that are the foundation for psychological support.²¹ For second and third year students it means alienation and apathy with law education.²² But it is a boredom fraught with

¹⁵ Pratt and Wong, *Can This Marriage Be Saved? The Effect of Law School on Love*, STUDENT LAW., Sept. 1975, at 52, 53; Benjamin, *supra* note 5, at 251; Manna, *supra* note 7, at 38; Rohr, Rohr and McKenry, *supra* note 7, at 62; Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career Relevant Interests, Attitudes, and Personality Traits Among First Year Law Students*, 1979 AM. B. FOUND. RES. J. 791, 803.

¹⁶ Benjamin, *supra* note 5, at 241.

¹⁷ *Id.* The study, conducted at the University of Arizona College of Law between 1981 and 1984, used four standardized self-report instruments (Brief Symptom Inventory, Beck Depression Inventory, Multiple Affect Adjective Checklist and Hassle Scale) to test students.

¹⁸ *Id.* at 247 (footnote omitted).

¹⁹ Benjamin, *supra* note 5, at 249 (two years after graduation, elevated psychological distress symptoms remained). See also Quade, *Myth v. Ms.: Why Women Leave the Law*, BARRISTER, Winter 1986, at 28 (time pressure listed as source of job dissatisfaction among women lawyers); Dubin, *The Role of Law School in Balancing a Lawyer's Personal and Professional Life*, 1982 J. OF PSYCHIATRY AND LAW 57, 58.

²⁰ Benjamin, *supra* note 5, at 251-52.

²¹ *Id.* at 243.

²² Dubin, *supra* note 19, at 65-67.

stress. The venue for competition shifts from the classroom to the placement office, but it is no less heated or consuming. Law school is the initiation of the socialization process whereby lawyers are conditioned to immerse themselves in their work regardless of personal cost.²³ This conflict between personal and professional demands is the main source of difficulty for lawyers trying to lead a fulfilling and rewarding life.²⁴ Law school teaches students that they will lead time-pressured lives but it provides few tools for resolving the conflicts arising therefrom.²⁵

As a profession we could shrug our collective shoulders, issue an empty lament that law school makes us crazy and we stay that way, and do nothing. And perhaps law school is a training ground for the inevitable anxiety of practice. However, given the indications of dissatisfaction in the profession, and the disparate impact of that dissatisfaction on women,²⁶ it is tragic to continue to perpetuate the cycle of conflict, stress, denial and exacerbated stress.

Legal education . . . promotes the use by lawyers of the mechanism of denial to defend the integrity of the ego against the threats presented by the emotional conflicts they experience. Both personally and professionally, resorting to this defense ultimately gets these lawyers into trouble. Rather than employing such an impairing defense as denial, they would be much better off being consciously aware of their conflicts.²⁷

II. GENDER PRESSURES

The psychology of law school is damaging to all students. For women students these lesions are deeper and more difficult to dress. The boot camp model of inculturation entails the breaking down of the recruit to build him up in the image of the drill instructor.²⁸ For the woman law student recruit, there is the breaking down process, the loss of the former life with its beliefs, priorities, and companions, but there is not the same opportunity to fill the vacuum with a new self and a new life. Can women law students ever wholly adopt the current professional image?²⁹ And in trying, is the cost the same for women as it is for men?

²³ *Id.* at 69, 76. See also Pratt and Wong, *supra* note 15, at 53; Rohr, Rohr and McKenry, *supra* note 7, at 57.

²⁴ Dubin, *supra* note 19, at 58; Watson, *Lawyers and Professionalism: A Further Psychiatric Perspective on Legal Education*, 8 U. MICH. J.L. REF. 248, 258-59 (1975).

²⁵ Dubin, *supra* note 19, at 68-69.

²⁶ Dubin, *supra* note 19, at 59. See also Project, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1255 (1988) [hereinafter *Stanford Study*] ("Typically, we found gender differences with greater frequency in the graduate, as contrasted with the student, sample.")

²⁷ Dubin, *supra* note 19, at 73.

²⁸ Halpern, *supra* note 14, at 389.

²⁹ Cf. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 155 (1988) (same problem of modeling confronts women law professors).

A. Dinosaurs and Denial

Outwardly the law school world is dramatically different from what it was fifteen years ago when I began law school. There are all these women. They are in the classroom, they are on law review, they are on moot court teams, they work as research assistants to professors. As a group they seem such a presence, so dynamic, so visible. Is the change real or superficial? Are women fully integrated and empowered in the institution?

"Defensive Feminism" is a term applied to women law professors scarred into inflexibility by the wounds of trailblazing.³⁰ One recent graduate contrasts these defensive feminist professors with female professors who, in their gender-neutrality, "epitomize the positive reality of female law students today. From my observations of several northeastern law schools I have concluded that female law students enjoy a virtual equality with their male counterparts which is due to the achievements of female students."³¹ The achievements of women students have been remarkable, especially given the very short time they have had to gain a foothold in the law school ecosystem.³² And there are also indications that things might be getting better as the numbers increase. The recent Stanford Study³³ indicated that while women students and graduates experienced more stress in school and work than men,³⁴ "[i]t may be that female law students are actually experiencing less stress than female graduates did when they were in law school."³⁵ Are women virtual equals with men in law school? If there is less gender-based stress, is the gender agenda complete?³⁶

Women's foothold in the legal profession is a long way from being a stronghold. Though women currently comprise about forty percent of

³⁰ Stolls, *A Feminine Perspective of Law School*, 59 N.Y. ST. B.J., Apr. 1987, at 30.

³¹ *Id.* at 31.

³² Until 1972 women did not have access to all ABA accredited law schools. Fossum, *Law and the Sexual Integration of Institutions: The Case of American Law Schools*, 7 AM. LEGAL STUD. A.F. 222, 229 (1983).

³³ *Stanford Study*, *supra* note 26, at 1232. The study compared the responses of female and male Stanford law students and graduates to questions about their experiences in law school and the legal profession, their reasoning about legal issues with moral overtones, and their experiences of role strain, stress, and psychological distress.

³⁴ *Id.* at 1256, 1258. However, the study notes that women may more readily report stress than men. *Id.* at 1230.

³⁵ *Id.* at 1253. The Stanford Study found all gender differences greater in the graduate, as contrasted with the student, sample. *Id.* at 1255. There may also be a process of denial operative in self-report answers by women law students. While the gender differences of students on questions relating to satisfaction with performance in law school, qualities admired by law professors, and feelings toward law school, were not significant, gender differences in class participation were statistically significant with respect to whether the students asked questions in class frequently or were likely to volunteer an answer. Arguably use of denial mechanisms is easier when the question regards vague overall assessments as opposed to a question more susceptible of self-knowledge: "Have I ever volunteered? Do I ever ask questions in class?"

³⁶ Hantzis, *Is Gender Justice a Completed Agenda?*, 100 HARV. L. REV. 690 (1987).

law students, they are only sixteen percent of all practicing attorneys.³⁷ Further, the attrition rate for women in private law firms, high-level government and tenure-track faculty positions remains disproportionately high.³⁸ Women are still combatting the "concerns" that excluded them from law practice a century ago:³⁹ women are not aggressively competitive and women are not truly committed to the practice of law.⁴⁰ These ghostly barriers of social perception have a haunting familiarity with the current image of professionalism.

Law schools reflect and perpetuate the sexism in the profession. Increasing numbers of women students have changed the law school environment.⁴¹ However, numbers alone will not remedy sex discrimination.⁴² A recent survey of law students at the University of California's Boalt Hall School of Law indicated that gender differences in self-imagining remain significant.⁴³ Women law students felt greater role conflict and less satisfaction with law school than men students.⁴⁴ Further, women students seemed to internalize the stress and have a lower self esteem.⁴⁵

While the empirical information is important, I believe it is necessary to listen to the stories of women told in their own voices to truly understand the role of imaging for women in law school. "Consciousness-raising validates experiences that have not often been given names,

³⁷ *Stanford Study*, *supra* note 26, at 1209.

³⁸ Zeldis, *Women Lawyers Still Feel Lash of Gender Bias in U.S.*, N.Y.L.J., Feb. 9, 1988, at 3, col. 1 (quoting law professor Emma Jordan, "Forty-one percent of the prestige schools have less than 12% of the teaching slots occupied by women."). In addition, a 1988 National Law Journal survey found that while 40% of new associates hired were women, only 19% of all new partners were women. Indeed, in 1987, only 8% of partners overall were women. Weisenhaus, *Still a Long Way to Go for Women, Minorities*, Nat'l. L.J., Feb. 8, 1988, at 1. Attrition rates for women entering private law firms are disproportionately high. Zeldis, *supra*, at 1, 3.

³⁹ *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) ("The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.").

⁴⁰ *Stanford Study*, *supra* note 26, at 1210-11.

⁴¹ There were 1,739 women law students enrolled in law schools in 1963. There were 47,920 enrolled in 1986. *A Review of Legal Education in the United States: Fall, 1986 Law Schools and Bar Admission Requirements*, 1987 A.B.A. SEC. LEGAL EDUC. ADMISS. B. 66, 66.

⁴² Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87, 89 (1988); Dickson, *Will Women Change Attitudes in Legal Education and the Law? You Need More Than Numbers to Know*, STUDENT LAW., Feb. 1988, at 9, 10.

⁴³ Homer and Schwartz, *Admitted But Not Accepted: Outsiders Take An Inside Look At Law School*, — BERKELEY WOMEN'S L.J. — (1990) (forthcoming).

⁴⁴ *Id.* at 8 (89% of men but only 69% of women agreed that, "I always or often feel as competent as others at Boalt"; only 29% of men but 51% of women agreed that, "I feel pressure to set aside my values to think like a lawyer"; 42% of men and 28% of women agreed that, "I like Boalt"; 62% of men and 45% of women agreed that, "I feel positive about my life since entering Boalt"; only 17% of men but 33% of women agreed that, "I've seriously considered dropping out of law school.").

⁴⁵ *Id.* (29% of men and 51% of women agreed that, "I felt intelligent prior to law school but not now"; only 11% of men but 31% of women agreed that, "I sometimes or rarely feel as competent as others at Boalt"; and 71% of men but only 50% of women agreed that, "I feel generally confident that my talents are respected in law school.").

at least not by those who have the experiences, and develops an understanding of their deep emotional, psychological, physiological, and cognitive impact on the tellers."⁴⁶ What do women say of their experience in law school? In preparation for this presentation, I invited the women law students at the University of Arizona Law College to attend a series of three experience-sharing, consciousness-raising meetings.⁴⁷ The comments that follow are excerpts from the discussion by women currently living their lives as law students.

COMMENT: Many professors do not call on women. When they do call on women, they often discredit the answer without even listening to it—often before it is made. When a woman student is speaking, they will look at their notes or the seating chart in readiness to call on another student. They seldom make eye contact with a woman student.

COMMENT: After class, around the podium, some professors ignore women's questions. One student told of standing at the podium and getting halfway through a question when a male student approached. The professor turned away from her and addressed the approaching male student.

As the comments indicate, although the number of women law students has increased dramatically, the role conflict for women law students remains.⁴⁸ Too often women are not seen as rightful entrants to the profession. Their presence represents a commitment to "diversity,"⁴⁹ not to integration and equality. Generally women are not listened to equally in education,⁵⁰ and the contributions by women may be seen as

⁴⁶ Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 9 (1988). See also Cain, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections*, 38 J. LEGAL EDUC. 165, 175 (1988) ("It has been claimed that women think differently from men, that we learn better if we are able to start with a particular and build to the abstract.").

⁴⁷ The only structure I placed on the meetings was to assure confidentiality and to ask that there be no mention of individual professors by name. Students knew that their voices would be heard through this panel at the Women and the Law Conference. Approximately 15 students attended the sessions.

⁴⁸ Dickson, *supra* note 42, at 10 (quoting Professor Frug, New England School of Law: "Everyone believes that just having women around will effect changes—but it won't . . . All [that belief] does is to perpetuate stereotypes."). Cf. Schneider, *supra* note 42, at 92 ("The New York Task Force Report documents the dilemma that these stereotypes pose for women lawyers when they do attempt to represent clients vigorously—they are punished for being too aggressive.").

⁴⁹ Cf. Delgado, *The Imperial Scholar: Reflections On A Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 570 n. 46 (1984) (criticizing utility-based justifications of affirmative action programs made by majority scholars which assume that diversity is educationally valuable to the majority. "But such an admissions program may well be perceived as treating the minority admittee as an ornament, a curiosity, one who brings an element of the piquant to the lives of white professors and students. Do not women treated in this manner complain, rightly, for the same reasons?"). The dangerous dimension of diversity has been rightly noted. See Rhode, *The "Woman's Point of View,"* 38 J. LEGAL EDUC. 39, 45 (1988) ("Similar conflicts arise when the request is for a point of view, but the motive springs more from intellectual voyeurism than intellectual curiosity."). See also Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 138 (1988) ("Despite the increasing number of women entering law school, men still view women, consciously or unconsciously, as abnormal, as strangers or outsiders.").

⁵⁰ See generally Hall and Sandler, *The Classroom Climate—A Chilly One For Women?*, 1982

not on point.⁵¹

COMMENT: What happens if the student is aggressive? Four women who were all in the same first year section recalled when one of them asked a professor a question to which he responded: "No one who thinks about this issue is concerned with that point." The professor continued to call on students. Three students later, a male student asked the same question. This time the professor responded: "Good question, . . ." Since this was still early in the first year, the original woman student questioner raised her hand and said, "I just asked that question and you said it was irrelevant." She was dismissed and told that she had not asked the same question.

Women are not only ignored by those who teach individual classes, but also by the texts of legal education. Women are generally absent from the casebooks as theirs is not an important story, or women in the selected cases are relegated to a stereotyped role.⁵² The classroom and casebook message of woman as "other" is further reinforced by institutional pronouncement—the dearth of women law professors.⁵³ This notion of diversity further compounds the role conflict. Women may be misled to think that they are in law school because of their different voice.⁵⁴ However, to use that voice is to have failed to learn to think like a lawyer.⁵⁵

COMMENT: In a first year small section class of thirty-five students, the professor asked for volunteers to engage in a contract negotiation simulation. Eight men volunteered and were divided into two teams of four. The teams consulted and then sat down to "negotiate." In what resembled a verbal rugby game, the teams yelled at each other, made totally unreasonable demands and ignored what the other team was saying. Negotiations quickly broke down entirely. The professor commended the students for their efforts. The women students felt that the whole simulation rewarded aggressive, unreasonable behavior as the course of choice in trying to model or simulate being a lawyer. It was an ideal of lawyering in which

PROJECT ON THE STATUS AND EDUCATION OF WOMEN; Sadker and Sadker, *Sexism in the Schoolroom of the 80s*, PSYCHOLOGY TODAY, March 1985, at 54.

⁵¹ See Elkins, *On the Significance of Women in Legal Education*, 7 AM. LEGAL STUD. A.F. 290, 303 (1983) (women are silenced in the classroom by subtle aspects of traditional legal education that deny the importance of personal feelings and beliefs).

⁵² Frug, *supra* note 13, at 1076-78; Erickson, *supra* note 13, at 108; Coombs, *Crime in the Stacks, or A Tale of Text: A Feminist Response to A Criminal Law Textbook*, 38 J. LEGAL EDUC. 117, 118 (1988).

⁵³ The results of the Society of American Law Teachers (SALT) 1986-87 Law School National Faculty Composition Study conducted by Professor Richard Chused of Georgetown University Law School indicate that women hold approximately 15.9% of all tenured or tenure-track positions. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 548 (1988).

⁵⁴ C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982) (psychological theory and empirical research indicate that women use a "different voice," emphasizing relationships and responsibilities rather than abstract principles of rights).

⁵⁵ See Menkel-Meadow, *supra* note 8, at 77 ("Rigor and warmth are mutually exclusive, and rigor in the classroom is valued over warmth."); Elkins, *supra* note 51, at 291-92.

they could never—and would never want to—engage.⁵⁶

In the competitive law school atmosphere, women students who do participate are not necessarily supported by their fellow male students.

COMMENT: Law school is so competitive that women students are discouraged from participating. Women who volunteer receive negative, undermining comments by male students. For example, if they made a comment that was not good, that was not favorably acknowledged by the professor, after class they would be told, "God, you really blew it today."⁵⁷

It should be no surprise that women students perceive law school as sexist.⁵⁸

The atmosphere and content of law school pose the problem to women of how to be two contradictory things at once. Most women are driven to silent survival in the classroom⁵⁹ and imitative male persona for the task of studying and taking exams,⁶⁰ where the stamp of their gender is not manifest to the questioner.⁶¹ At home this divided self is much more difficult to maintain.⁶²

COMMENT: Family and friends do not understand the pressures of law school. There is discouragement for studying too hard or taking a high pressure job. One woman described her own experience of conflict between obligations to her child and dedication to law school. She felt that there was "a flaw in her personality" that led to her inability to totally dedicate herself to law school and ignore her child. Though she did very well in law school, was at the top of the class, she believed that she would

⁵⁶ Bender, *supra* note 46, at 7. ("Men have constructed an adversary system, with its competitive, sparring style, for the resolution of legal problems."). See also Menkel-Meadow, *Portia In a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 53-54 (1985).

⁵⁷ Three of my best women students approached me after class to ask if they were participating too much and asking irrelevant questions. I immediately assured them that they were doing no such thing, and that if they ever did, it was my job as the professor to control discussion. Given that they were a long way from "participating too much" (they each asked or answered an average of one question every three days), I asked what gave them this idea. They told me that they were confronted by a group of male students after class. One comment they had received was, "I thought you were a lot smarter than to ask such stupid questions."

⁵⁸ See generally Banks, *supra* note 49, at 146. (Study of Students Perceptions of Gender Bias in Law School Classrooms: "The preliminary findings . . . suggest that women are silent because the law school classroom environment, structure, and language tend to exclude women or make them feel inferior."). See also Siegel, *supra* note 9, at 26 (quoting staff director Elaine Weiss, ABA Commission on Women in the Profession, summarizing testimony in hearings before the Commission. "Frankly, we were shocked by the testimony of both faculty and students. . . . We didn't realize the severity of discrimination within the law school environment.").

⁵⁹ Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 150 (1988); Banks, *supra* note 49, at 138-39.

⁶⁰ Banks, *supra* note 49, at 138 ("Women, because of gender, are not naturally members of the 'club.' Thus the club members expect women to change and adapt—to become more like men—in order to join the club.").

⁶¹ Some of the women law students who participated in consciousness-raising groups at the University of Arizona College of Law said they typed their examination answers to avoid the sexist stereotyping that was the price of using their own hand.

⁶² See generally Manna, *supra* note 7, at 38.

never really be a good lawyer because her whole life was not her profession.

Women are not supposed to place career ahead of family and friends. Thus assuming the projected role of professional by definition requires a new self- and social-concept.

Law school changes both female and male students. While these changes challenge the interpersonal relationships of both genders, the changes for women produce conflict with deeply ingrained social role expectations. Not surprisingly, women are more likely to experience a breakdown of the personal supports of their private life. For example, women law students are more likely to divorce than their male counterparts.⁶³ Indeed, more than time pressures, it is role conflict from "discrepant expectations"⁶⁴ that leads to marital stress. Counselors advise stress-mitigating techniques that include "compromising professional aspiration to meet marital role obligations."⁶⁵ Sadly, the compromise costs aspiring women professionals much more than men.⁶⁶ Role conflict between professional demands and societal expectations excludes women law students from both the private and professional worlds.

B. Realism and the Double Bind

The perception of women by those in the legal profession, combined with societal pressures and constraints, places women law students and women lawyers in a double bind. The double image prevents women from truly adopting the male constructed image of "good" lawyering, despite the efforts (with some short-term success) of many women to try to become "just like a man."⁶⁷ The other side of the image is the social and psychological pressure to be a "good" woman, vaguely defined as a nurturing, caring person.⁶⁸ While both images are to some extent in flux, they seem to demonstrate a remarkable resiliency to old form.

How costly is the compromise? On the individual level there is the

⁶³ Manna, *supra* note 7, at 38 (quoting Dr. Clarence Hibbs, psychologist and social sciences professor, Pepperdine University School of Law).

⁶⁴ Rohr, Rohr and McKenry, *supra* note 7, at 57.

⁶⁵ *Id.* at 63.

⁶⁶ See, e.g., *Stanford Study*, *supra* note 26, at 1228 n. 110. The Stanford Study cited an earlier survey in which "both female and male Stanford law students considered childcare to be primarily a woman's responsibility."

⁶⁷ See generally Bender, *supra* note 46, at 7 ("For if institutions are designed by men to reflect male values, characteristics, conceptions of reality, and needs, and if women are acculturated differently or have alternative perspectives, then even women who have access to male institutions will have to relinquish their female training and identity in order to succeed.")

⁶⁸ Bender, *id.* at 18 ("Feminist scholars have been able to illustrate how the gender 'woman' like language itself, has been constructed by men for men. . . . Woman is nurturant, giving, submissive, sensual, mother, housekeeper—all things that man wants her to be. A female who is not these things is not a real or proper 'woman.'"). I note only the role conflict, not whether women are or should be more caring and nurturing. For more on these topics, see generally C. GILLIGAN, *supra* note 54, at 16-17; C. MACKINNON, *FEMINISM UNMODIFIED* (1987).

tragedy of internalization. Women students who choose to make quite reasonable compromises internalize their failure to emulate the model of lawyering constructed through the mythology of the institution. Indeed, much of the exclusion of women from the power centers of the law is based far more on their inability "to maintain the *appearance* of total dedication to their careers."⁶⁹ One is reminded of the scene from *Adam's Rib*,⁷⁰ where Katharine Hepburn asks that we imagine the defendant a man. Judy Holiday fades into this new figure, with slicked back hair, suit and tie. The inability to replay celluloid fantasy in our own life becomes our fault.

Society responds to this conflict by a divide-and-stratify strategy—Mommy-track v. Career-track⁷¹—which sends a destructive dual message. While one might change the rhetoric to "parent-track," the reality would be the same.⁷² Only women would be forced into the choice that is no choice at all—have a family or a career.⁷³ Those who try to have it all are rewarded with the special stress suffered by working mothers,⁷⁴ combined with the stress of being a pressured lawyer. This stratification pits women against themselves and forces them to abandon the fundamental image of either woman or professional.

III. NEW LESSONS

Solutions may begin where professional imaging begins—law school. I offer no magic formulae for women redefining professionalism. In sculpting as our own Pygmalian, however, we should not be blind to the power of present concepts of professionalism or to the subtler effort to exclude women by convincing them that compromise of professional ambition is the only way to "have it all." To begin the resolution of conflict we must begin a conversation, we must consciously confront the conflict. To avoid this discussion is to deny our experience and internal-

⁶⁹ *Stanford Study*, *supra* note 26, at 1228 (emphasis added).

⁷⁰ *Adam's Rib* (Loews, Inc. 1949).

⁷¹ Schwartz, *Management Women and the New Facts of Life*, HARV. BUS. REV., Jan.-Feb. 1989, at 65 (sets out a new approach to the employment of women as executives and professionals: force women to choose between a career-track or a mommy-track position. Such a choice recognizes that in our society parenting is still primarily the mother's responsibility.).

⁷² See generally *Stanford Study*, *supra* note 26, at 1223 (An overwhelming majority of firms reported that only women had chosen to take advantage of part-time work options in order to raise children) (citations omitted).

⁷³ See e.g., Schwartz, *supra* note 71, at 69 ("Some 90% of executive men, but only 35% of executive women have children by the age of 40."). A few women can have it all, but very few. It is well worth noting that most men (90%) have it all without even knowing it.

⁷⁴ See generally Gore and Mangione, *Social Roles, Sex Roles and Psychological Distress: Additive and Interactive Models of Sex Differences*, 24 J. HEALTH AND SOC. BEHAV. 300, 301 (1983) ("From a sex-role perspective, these findings are not surprising. Whereas work is compatible with the family-role expectations of men, it is less compatible with the family roles of most women, thus resulting in role stress and the poorer mental health of women.") (citation omitted).

ize a double bind as a defect. Our first task lies in awareness of the conflict.

Law school lessons begin with the formal composition and structure of the institution. Though increased numbers of women students alone will not bring equality of treatment and expectation, presence is crucial for the strength to build consciousness. Thus, the number of women students in law school needs to be maintained and equalized.⁷⁵ The cycle of a chilly institutional climate and the promise of compromised professionalism may well lead to alternative career goals for women. This would be tragic for the legal profession and for society. Lawyers are important to the running of our world, both socially and economically. They walk the corridors of government, advise corporate America and argue for judicial shaping of policy ranging from surrogate parenting to environmental waste. If we are to break the double binds that restrain all women we need lawyers who are not men. Thus we need to recruit women students and to provide the financial support that will enable them to attend law school.

We also need to provide emotional support for women students struggling with the call to play two parts in the same play. Emotional support begins by providing intellectual support. In 1972, the AALS called for the teaching of law as it relates to both sexes.⁷⁶ There was an understanding that women's issues should not be marginalized in some special course isolated from the "real" law core curriculum. Given that women are half the population served by the legal system, this does not seem unreasonable. Nevertheless, most law schools do not have even the minimal, segregated Women and the Law course.⁷⁷ As a beginning, all law students must be exposed to gender issues.

The effort to integrate gender issues into casebooks and classrooms must continue. In the interim, every law school should offer a course that addresses sex-based discrimination. Most Women and the Law courses currently are elective courses for second or third year students. To be most effective, a Women and the Law course should be part of the

⁷⁵ In 1987, of a total of 117,997 students attending a J.D. program, 48,920 were women. Of the 4,199 students attending a post-J.D. program (LLM, MCL/MCJ, SJD/JSD), 1,155 were women. *A Review of Legal Education in the U.S.: Fall 1987 Law Schools and Bar Admission Requirements*, 1988 A.B.A. SEC. LEGAL EDUC. ADMISS. B. 65.

⁷⁶ Erickson, *supra* note 13, at 115 ("In 1972, the AALS urged that the teaching of sex-based discrimination not be confined to special courses but be diffused throughout the whole curriculum."); Schneider, *supra* note 42, at 89-90; see also Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. 97, 97-99 (1988).

⁷⁷ The 1988-1989 Association of American Law Schools (AALS) Directory of Law Teachers lists only 93 teachers of Women and the Law. A total of 197 schools reported (154 member schools, 21 fee-paid schools and 22 Canadian schools) to the AALS. Nor does this mean that half of all law schools have a professor teaching Women and the Law, as some schools have more than one person in the area, such as UCLA which has four professors listed. ASSOCIATION OF AMERICAN LAW SCHOOLS, *THE AALS DIRECTORY OF LAW TEACHERS* 1034-35 (1988-89).

first year curriculum. The first year of law school is the initiation rite. An effort on the part of the law school to let first year women students know the history of women as lawyers and their exclusion from the profession because of their sex, provides a foundation for understanding their exclusion from the written text of the law. Students need a grounding during their immersion in the casebooks that too often are stories of powerful men and invisible women. Short of restructuring the first year curriculum, a modest alternative would be to address gender issues as part of first year orientation or as part of the broad-based legal writing or "law firm" courses.

Emotional support also arises from modeling. Empirical as well as anecdotal evidence shows that women law students have increased participation in classes taught by women law professors.⁷⁸ Women professors are in the front lines of recognizing and integrating the gender aspects of traditional subject areas. Their scholarship has led the way to a new perspective on jurisprudence. Their presence in the law school provides a female image of successful lawyering for women law students and makes the males in the institution more aware of, if not more sensitive to, gender issues.

More women law professors must be hired and tenured. Unfortunately, law schools in their current pattern of hiring are a model of stratification of women in the profession. Very few women are in tenured or tenure-track positions.⁷⁹ Tokenizing women professors exacerbates the double binds of the profession. Women not only need to be hired, they need to be valued.

I urge not a kinder, gentler legal system, but for women to be treated fairly and respected for their accomplishments in this legal world. The study of law in the United States promotes a professional ethic and image. The resilience of the institution in perpetuating the harried, aloof lawyer is amazing. Professionalism that defines women as the "other" or as exactly the same inevitably promotes inequality. We need a structure, beginning in law school, where women can address the conflicts as experienced.

The destructive dynamic of conflict and denial is far worse than the healing pain of conflict and consciousness.⁸⁰ The law school climate chills with a constant reminder of women's gender, and when reacting to the reminder, we reinforce the difference institutionally. Gender becomes an issue because it is an issue. The task is to raise consciousness

⁷⁸ Banks, *supra* note 49, at 143 (Almost twice as many women as men believe that sex of the professor makes a difference in the frequency with which they are called on in class; 70.8% of female students and 55.4% of male students believed that women professors are more encouraging; significantly more women than men believed the sex of the professor affects their voluntary class participation.). See also Wildman, *supra* note 59, at 151-52.

⁷⁹ Chused, *supra* note 53 (only 15.9% of those in tenured or tenure-track positions are women).

⁸⁰ Dubin, *supra* note 19, at 73.

so that the image of professionalism can be understood and rethought. The method of teaching law formulates a professionalism that is hurtful of all law students and troubling for practitioners trying to lead a balanced life.⁸¹ Opening a discourse on professionalism and gender will, hopefully, lead to a restructuring of the concept of professionalism which will benefit all future lawyers.

⁸¹ *Id.*