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Citation:

Autumn Mesa, A Woman's Climb Up the Law School Ladder,
9 Cardozo Women's L.J. 379 (2003)

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Tue Jan 22 21:16:03 2019

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A WOMAN'S CLIMB UP THE LAW SCHOOL LADDER

AUTUMN MESA*

I. INTRODUCTION

The American law school system poses a potentially detrimental impact for at least half of its students. Law school not only teaches a student to think like a lawyer, but serves as a process to weed out the weak – those that the law school administration deem unfit for the practice of the law. The number of students that do not return to law school after their first year is high: seventeen percent of students at Golden Gate University do not return after the completion of their first year.¹ While the major factor in determining if a student will be permitted to return is class rank, there are psychological obstacles a student must overcome to prove his/her determination to finish law school. These tests are comprised by negative remarks, having to prove one's worth, competition amongst students, and the abuse of the Socratic method to make students feel inferior, to name just a few examples. It is women who are most damaged by this, as they tend to internalize these tests that lead to their own law school demise.

During my first year, I heard several remarks implying that I did not belong in law school. Included in these were comments such as:

"You should think about the well-being of your son before thinking about your own education."

"Maybe you should wait until your son is eighteen before pursuing a law degree."

"You should limit the amount of loans that you take out during school since you have a dependant child to consider"

and even:

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¹ GUIDE TO LAW SCHOOLS 247 (Barron's Educational Series, Inc. 1998) (1967).

"Single mothers do not belong in law school."

I found each statement to be a test of my strength and determination to pursue a legal education and how much I was willing to give to reach my goal. Initially, I thought that each of these statements were tactics to break me down personally. I now know that this was not an attempt to get rid of me, but rather part of a common experience of women in law schools across the United States. I wondered if my time at Golden Gate University, where I experienced hierarchical structures at work in the legal education system, was a Golden Gate phenomenon. However, my research has suggested that these tests are prevalent in evaluating women in all law schools.

I internalized my experience, questioning myself about whether or not I belonged in law school and whether or not I was capable of serving the law. I am not alone. I found that many women confront the same feeling of not belonging.² Unfortunately, it is "those who doubt themselves or doubt whether they belong in the [l]aw [s]chool [that] do not perform as well."³ For those that ponder these same questions or doubt themselves, they do so to their own detriment. However, it is not that these women are unfit for law school or the practice of law, but that legal education has been unwilling to adapt to the presence of women.

II. PURPOSE

This essay will illustrate how the hierarchical structure of the American law school detrimentally impacts its female students, who comprise half of its student body. It is my hope that the female reader of this essay realizes that her status as a woman does not make her unfit for a legal education and that she need not change in order to be an effective attorney; rather, it is legal academia that is in need of change.

The female reader need not change in order to be an effective attorney. It is legal academia that must change. Since "[t]he model of the standard law student is a single person with few or no outside obligations,"⁴ being a woman, a student, a mother, a wife, or any other role may conflict and create barriers for female students within the current legal system. Through awareness of the continuing existence of a sexist environment at law schools, women can change how future lawyers are produced without an internalization of inferiority.

² See generally Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1988).

³ Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 62 (1994).

⁴ Paula Gaber, "Just Trying to be Human in this Place": *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165, 239 (1998).

III. Method

This essay will examine the disparity in the treatment of women by examining tenure, courses taught by women, lack of mentors for women, feelings of inferiority, student achievement, and visual perception of academia. By incorporating prior studies on women's legal experiences and legal texts with my own experience, I will reveal the nature of law schools. The purpose of this is to illustrate how law school negatively impacts a large portion of women that choose to pursue the law while raising the level of awareness of needed changes.

IV. BACKGROUND

Women have struggled to gain recognition in the public sphere and to accomplish that which was previously defined as male work. While women are represented in large numbers working outside the home, the positions available to them are limited. Furthermore, their salaries are disparate in comparison to men's, and sexism on the job remains prevalent.⁵ A wage gap continues between the economic values denoted to the work of women in comparison to their male counterparts. Women are limited in their upward mobility, often hitting a "glass ceiling"⁶ – one that does not exist for males with similar educations and experiences. The struggle that women face in the working world is not exclusive to the office; this struggle begins before women enter their law professions, as sexist interactions are present throughout a woman's education.

V. THE INHERENT HIERARCHY OF LEGAL EDUCATION

The hierarchical structure of law school has been compared to the structure of a law firm. Each is a community with layer upon layer, a top and a bottom, and people deferring to a few. The hierarchies embedded in the minds of those striving to become lawyers "contributes to the reproduction of illegitimate hierarchy on the bar and society."⁷ Duncan Kennedy, in a privately printed article to law students, advises his readers to resist this reproduction of illegitimate hierarchy where authority is systematically exerted and results in personal submission.⁸ The reader of the article should resist "ideological training for willing service in the hierarchies of the

⁵ BRENDA FEIGEN, NOT ONE OF THE BOYS LIVING LIFE AS A FEMINIST 289 (2000). A 1990 salary and compensation survey of 799 major companies showed that of the highest paid officers and directors, less than one-half of one percent were women.

⁶ *Id.* "When it comes to women in business, there are female corporate executives, but they usually bump into the glass ceiling of vice president."

⁷ DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM i (Afar 1983).

⁸ *Id.*

corporate welfare state."⁹

While Kennedy concludes his article with concrete suggestions for the development of communities, it is ironic that he writes from the standpoint of a man that has benefited from the same hierarchy he condemns. Kennedy's status as an upper middle class white male and professional rank as a Harvard professor gives him an interest in the perception that hierarchy is both omnipresent and enormously important.¹⁰

After reading Kennedy's article on the inherent hierarchy in the American legal education during my undergraduate education, I thought I was prepared for my own law school journey. However, through my experience in the American legal education system and the training of how to think like a lawyer, I have seen an additional element to the multiple levels of the law school hierarchy – that of the placement of women in the American legal education. The law school ladder, as well as the law firm ladder, is different for women than for men. For women, learning to think like a lawyer is equal to "learning to think and act like a man."¹¹ A "male professor at one institution told a first-year class, 'to be a good lawyer, behave like a gentleman.'"¹²

Kennedy's main argument is "that young initiates in the law are beaten into submission . . . by a system meant to indoctrinate its enrollees with the proper attitude toward contemporary corporate capitalism."¹³ Kennedy belongs to the dominant group that has traditionally represented the law school population, both for students and professors. Kennedy does not differentiate between the processes by which a male law student in comparison to a female law student is beaten into submission or the additional barriers a woman must surpass. "[T]he law school experience, which is designed to establish an academic hierarchy, in turn generates gendered alienation."¹⁴

This essay should serve as an illustration of areas where Kennedy's article is lacking – the gender stratified hierarchy women face within American legal education and the additional barriers posed by this hierarchy that they must overcome. This hierarchy is constructed within the first-year of law school where "white men rise to the top, but women scatter downward."¹⁵

The law school experience is different for women as opposed to men.

⁹ *Id.*

¹⁰ *Id.* at 75.

¹¹ Guinier et al., *supra* note 3, at 5.

¹² *Id.*

¹³ Robert Coles, Book Review, *Hierarchy and Transcendence*, 97 HARV. L. REV. 1487, 1491 (1984).

¹⁴ Guinier et al., *supra* note 3, at 42.

¹⁵ *Id.* at 67.

Women face more obstacles and barriers in order to be successful in the profession, such as feelings of alienation, lack of mentors, and the burden of extra responsibilities placed on women of continuing traditional female roles as wife and mother, all while trying to compete in a traditionally male field. While women are now admitted into law schools and the blatant sex discrimination of not permitting women to practice law is in the past, the law school hierarchy continues to serve as a tool for a more discrete form of discrimination against women.

A. *The Visual Hierarchy*

Upon entering any law school the inherent differences between men and women in legal education are visually apparent by virtue of the photographs displayed on the walls of the institution. When you look at the pictures hanging on the walls of Golden Gate University representing both the staff and the alumni of the school, there is a predominance of older, white males. "Many law schools today are draped in painted portraits of imposing white male figures in serious suits who are former students and professors."¹⁶ However, when you look at the population of recent incoming classes, the percentage of women exceeds that of men. In order for these women to excel, they must break through the barriers of a male dominated paradigm; they must change a part of themselves in order to survive in an area that still seems to work as an "old boys network." The pictures hanging on the walls of the legal institution only reaffirm the "prevalent image of a law professor [as] a white-haired, bespectacled man wearing a gray flannel suit."¹⁷

After portraits of law school deans were hung in the corridor of the law school, one woman at the University of Virginia stated, "I respect their decision to put up the portraits; but where are the representatives of minorities and women? In light of that absence, it's offensive to me."¹⁸ While these pictures represent a law school's history, this history is one that continues to send a message to minorities and women that they are inferior. These pictures represent a history of oppression for women and minorities, who were once not permitted to enter a professional school. So, why is it that the law school prides itself in these portraits?

Any sense of empowerment of joining the ranks of men in this male dominated profession is destroyed by the realization that the changes in the profession have been minimal and any progress that has been achieved has

¹⁶ Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 343 (1996).

¹⁷ *Id.*

¹⁸ *Univ. of Virginia Portraits of Law School Deans Focus Attention on Need for Diversity*, JET, Mar. 3, 1977, at 32.

been slow. "In 1972, seven percent of American law degrees were awarded to women; twenty years later, forty-three percent of all law degrees were awarded to women."¹⁹ Some argue that women should "be encouraged by the fact that the progress, although slow, seems to characterize legal institutions' adaptation to increasing women in their ranks."²⁰ However, to "adapt," is to put in harmony with changed circumstances²¹ – a strong term for the changes that the legal institution has seen. Legal institutions are not in harmony with the changes in the percentage of women that apply for admission when the portraits of white males continue to represent the dynamics of those that are tenured faculty. Evidence that American law schools have truly adopted these changes seems non-existent when hiring committees have been resistant to give tenure to professors that are of the same gender as half of the law school population at most American legal institutions.

B. Tenure for Women is Disproportionate

A disproportionate amount of women receive tenure in comparison to the percentage of women that represent today's law school class. At Golden Gate University, for example, there are two tenured female professors and as for female professors on a whole, very few teach core legal courses. This phenomenon is not just a Golden Gate University occurrence; female law professors are under-represented at all law schools, where "[o]nly 16 percent of tenure law school professors are women."²² While a tenure committee must ensure that those offered tenure are the best professors for the job, "[t]he absence of female professors during the all-important first year sends the message that women are not part of 'real' law."²³ This is the message I heard when only two of the eight first year professors I had were women, one of which was for writing and research. With the number of women entering the legal profession, there must be more qualified female professors than what the law schools are hiring.

The hiring of female faculty at law schools has been an extremely slow process. While women "represent about 44 percent of students entering law school,"²⁴ the faculty/student ratio based on gender alone is disproportionate. "At no school are female teachers represented in

¹⁹ Sarah Berger et al., Essay, "Hey! There's Ladies Here!!," 73 N.Y.U. L. REV. 1022, 1023 (1998).

²⁰ Janet Taber et al., Project, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1259 (1988).

²¹ MERRIAM-WEBSTER DICTIONARY, available at <http://www.m-w.com/cgi-bin/dictionary> (last visited Mar. 2, 2003).

²² Sandra Torrey, *ABA Panel Finds Sex Bias in Law Schools*, WASH. POST, Feb. 3, 1996, at A03.

²³ Torrey et al., *supra* note 2, at 280.

²⁴ Torrey, *supra* note 22.

proportion to female students; white male teachers are over-represented.”²⁵ In 1986, full-time female faculty members represented 20.4% of all full-time faculty at accredited law schools; however this number includes professional skill teachers and legal writing teachers, which “are viewed as holding bottom of the ladder positions,” and who are paid less, and are on a separate tenure track than professors teaching core courses.²⁶ The under-representation of tenured female professors has a pivotal impact on many female students because it implies that women are not worthy of being in the highest tiers of the law school education system, and therefore not equivalent to their male competitors.

At Columbia University students reported “that having older, white males as the majority of their first-year professors creates the perception that a lawyer is an older, white, aggressive male.”²⁷ This leaves the impression that women are less valuable both in the legal institution and the profession. A report released by the American Bar Association providing that “female professors often are paid less and are less likely to be promoted” than male professors further enhances this view.²⁸

Women are placed at a disadvantage due to these token female professors. Female law students have fewer doors of female professors on which to knock compared to their male counterparts. Female faculty are more likely to mentor female students, female faculty are more approachable as perceived by female law students, and the ability to approach faculty is “critical to students’ self-perception of their role in the institution as it is to the substantive learning that takes place in these informal settings.”²⁹

In 1991, a group of Harvard law students filed a suit alleging “that the law school [] engaged in discriminatory hiring practices in which white men [were] preferred over minorities and women.”³⁰ This was the first attempt by students to file such a suit, but it was not the first time that the courts have heard such claims. Female professors alleging discrimination in tenure decisions often fail to demonstrate a prima facie case, as the perceived discrimination is usually found to be an impact effectuated by a woman being judged by a man’s standard. Tenure committees are composed of tenured faculty, who tend to be white, older, and male, and when the committee must judge a candidate’s ability to fit in with existing faculty, the male faculty are unable to identify with a woman who demonstrates qualities

²⁵ Torrey et al., *supra* note 2, at 309.

²⁶ Marina Angel, *Women in Legal Education: What It’s Like to be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 803, 804 (1988).

²⁷ Torrey et al., *supra* note 2, at 280.

²⁸ Torrey, *supra* note 22.

²⁹ Torrey et al., *supra* note 2.

³⁰ Paul Langner, *Judge to Rule on Bias Suit of Harvard Law Students*, BOSTON GLOBE, Feb. 16, 1991, at 54.

different from those judging her. "Some of the women who survived the hiring and tenure processes did so because they adopted a male style or one that was not threatening to male faculty members."³¹

C. *Exclusion of Women from Legal Discourse*

Any benefit derived from the women's legal perspective, as opposed to the men's, is negated when women are taught to deny what are seen as traditionally female traits in order to be successful in law school. Carol Gilligan has analyzed the different thought processes that men and women use, and how those differences impact women in the law. Gilligan found that men and women have different approaches to decision-making and problem solving – women speak "with a different voice."³² The female decision-making process is based on preserving relationships, nurturing, individual responsibility, and expressing an ethic of caring and compassion that is concerned more with the results of a particular factual situation than with strictly enforcing universal rules.³³ While even Justice Ruth Bader Ginsburg has stated that women "contribute . . . 'a distinctive medley of views influenced by differences in biology, cultural impact, and life experience,'"³⁴ these contributions of the "female voice" are hushed by the "male voice" – "expression [which] is designated [as] the only legitimate form of rational legal thought."³⁵ Being a woman does not necessarily mean that you think differently than men; however, in order for women that think along more traditional lines to survive in law school, they must learn "to speak male as a second language, and learn it fluently."³⁶

When views and feminine-decision making in the "female voice" are cancelled by the "male voice" in training women to think and act like lawyers, it becomes a struggle to keep the woman within alive. "Women's 'care' responses decreased significantly so that at the end of the first year there was no real difference in the 'care' orientations of women and men."³⁷ In order to continue to be herself, a woman must learn to think and act one way during the day and only let her nurturing and compassionate qualities come out when not being judged by the male standards within the legal institution. The possible contributions that others, including Justice Ruth

³¹ Angel, *supra* note 26, at 831.

³² CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 2 (Harvard Univ. Press 1982).

³³ *Id.* at 29, 164.

³⁴ Ruth Bader Ginsburg, *The Progression of Women in the Law*, 28 VAL. U. L. REV. 1161, 1174 (1993) (remarks by Justice Ruth Bader Ginsburg at her August 10, 1993 investiture at the White House).

³⁵ K.C. Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, in FEMINIST LEGAL THEORY II 1147 (Frances E. Olsen ed., 1995).

³⁶ *Id.* at 1145.

³⁷ Torrey et al., *supra* note 2, at 283.

Bader Ginsburg, saw in hearing the "female voice" expressed in legal discourse seems to not be valued within the doors of legal academia, where women are sent messages that the law is a man's world and women must learn to act in the prescribed male-dominated manner. "Female students submerge or deny the perspectives they brought with them to law school in order to survive."³⁸

The perceived value of the "female voice" has been hushed to the point where the woman in law learns to speak only in a "male voice." For some women, they learn only to hear their own learned "male voice" and complain "that they can no longer recognize their former selves, which have become submerged inside what one author has called an alienated 'social male.'"³⁹ By the end of their law school experience, "women students come to sound more like their male classmates, and significantly less like their first-year 'selves.'"⁴⁰

When law schools are composed of the perspectives of white men who are accustomed to teaching people similar to themselves, they are ill-equipped to teach law to a class that is comprised of different life experiences, different ways of thinking, and often different expectations. Law professors, through use of the Socratic method, create hypothetical situations to test a student's knowledge of the rules that are needed to pass the bar exam and prove one's legal worth. As a law student you learn to brief cases so if your name is called you will have the ability to respond in the way that the professor wants. However, when hypothetical situations are constructed in a manner that caters to a male perspective, women are unable to prepare a correct response. For example, many of my first-year professors used hypothetical situations involving football and other sports, all of which are generally male practices. While I do not want to stereotype what is male and what is female, the fact remains that more men than women follow sports. Therefore, the use of these hypothetical situations isolates the women from the men. Should a woman be required to not only learn the law, but to learn a sport that she has no interest in?

"Classroom interactions for women, especially in the first year, [are] a primary source of alienation, for practices within the law school belittle[] relational reasoning, empathy, and collaborative ways of working in favor of more 'gentlemanly' ones."⁴¹ Learning the rules of a particular case can be daunting enough without having to know, for example, what is meant by a particular football term. Women perceive a professor's use of the Socratic

³⁸ *Id.*

³⁹ Guinier et al., *supra* note 3, at 4.

⁴⁰ *Id.* at 41.

⁴¹ Berger et al., *supra* note 19, at 1035.

method “to intimidate or to establish a hierarchy within large classes.”⁴² It is through tactics such as these that law schools “exclude stereotypically female sensibilities from legal discourse.”⁴³

Efforts to achieve diversity are pointless when the diverse viewpoints are not accepted by the majority and only magnify the differences between those on the higher tiers of the hierarchy from those occupying the lower tiers. Golden Gate University is “strongly committed to promoting diversity,” where factors such as race, ethnicity, disability, socioeconomic status, sexual orientation, and other factors that add to the diversity of the student body are considered during the admissions process.⁴⁴ The university might achieve a diverse student body in its admissions, however, this commitment to diversity is thwarted by mechanisms within the law school that exclude the perspectives of a large portion of the class – the “female voice.” The perceived value of the viewpoints that could be expressed in a diverse student body are nothing more than illusory once a student realizes that surviving law school is equal to leaving individuality behind and adapting the dominant white male perspective.

D. Effects of the American Legal Discourse on Women Students

Law school is designed to be a competitive, rigorous environment. While teaching students how to think like a lawyer, each student is evaluated on multiple levels. Each is scrutinized to determine who will benefit the law school through bar passage rates, alumni funds, attainment of the most prestigious jobs, and elevating the reputation of the law school within the community. It is through this that the law school determines who are weak and lack the ability to survive law school. It is through this scrutinizing that “women can expect a hostile environment while attending law school.”⁴⁵

The hostile environment women experience as law students fosters feelings of inferiority, which can lead to other physical and mental problems. “Studies report that feelings of powerlessness, alienation, and self-doubt directly result from the law school experience. It is not unusual for women to even suffer physiological responses to the stress.”⁴⁶ “[W]omen are significantly more likely to report eating disorders, sleeping difficulties, crying, and symptoms of depression or anxiety.”⁴⁷ In Ohio, the “law school experience resulted in lower self-esteem for almost half of the women

⁴² *Id.* at 1036.

⁴³ *Id.* at 1035.

⁴⁴ GOLDEN GATE UNIVERSITY SCHOOL OF LAW J.D. CATALOG 48 (San Francisco 2001-2002).

⁴⁵ Torrey et al., *supra* note 2, at 267.

⁴⁶ *Id.* at 288-289.

⁴⁷ Guinier et al., *supra* note 3, at 44.

attending law schools."⁴⁸ These feelings of low self-esteem, inferiority, self-doubt, alienation, depression, and anxiety that affect many of the women attending America's law schools should be a signal that sexism continues to lurk in the law school halls and continues to preserve the hierarchical structure that places women in the lower tiers.

E. Classroom Environment

"In the law school Socratic method, the teacher conducts the class by questioning students on the subject matter of their assigned case readings . . . In the true law school Socratic method, the student is always wrong."⁴⁹ The continuous questioning eliciting responses from the student that never quite gets at the answer (known only by the professor) is referred to as "hiding the ball."⁵⁰ It is the professor's "hiding of the ball" and questioning of students that sets the tone for the classroom environment, an environment critical to the success of law students. The use of the Socratic method enforces the professor's place in the higher tiers of the law school hierarchy, as he is the only one that truly knows where the ball is and can clearly see it. While the Socratic method strengthens this hierarchical structure, it may not be the most conducive way for many students to learn the law. Ensuring an environment that provides more than a search for "the ball" should be a priority of law schools "[g]iven the empirical evidence indicating that class participation is connected to performance, self-esteem, and professional outcomes."⁵¹

The Socratic method is known to "incite sundry emotions in the law student – everything from feverish exhilaration through mortal dread to terminal boredom,"⁵² where women fare worse than men. "Many studies . . . conclude that the Socratic method confuses and frightens rather than encourages and enlightens many students and has been shown to be disparately harsh on female students."⁵³ A study of observations in eight Contracts classes at one law school lead to the finding that male students spoke fifty-four percent more frequently than women, and spoke for longer periods of time as much as seventy-one percent more.⁵⁴ Even if women speak, "they speak substantially less in later years as they learn that their viewpoints are not responded to or valued."⁵⁵ The Socratic method "furthers the patriarchal power of the teacher while simultaneously devaluing students

⁴⁸ Torrey et al., *supra* note 2, at 268.

⁴⁹ Pierre Schlag, Essay, *Hiding The Ball*, 71 N.Y.U. L. REV. 1681, 1683-84 (1996).

⁵⁰ *Id.* at 1684.

⁵¹ Berger et al., *supra* note 19, at 1053.

⁵² Schlag, *supra* note 49, at 1683.

⁵³ Torrey et al., *supra* note 2, at 282.

⁵⁴ *Id.* at 276.

⁵⁵ Angel, *supra* note 26, at 809.

and undermining their confidence and self-esteem."⁵⁶ Men and women perceive the use of the Socratic method differently, where "[m]ore women than men are aware that the Socratic method often leads students not to their own conclusions but to the teacher's own views."⁵⁷ Therefore, students learn the law for that professor, who more often than not is a white male, thus perpetuating the dominance of male views in the application of law both in exams and in practice. It is through the classroom environment that "[t]he institutional norm based on male values and perspectives . . . remains intact."⁵⁸

By creating a supportive informal environment, female students can create their own systems of survival. In one first-year group, the women made a pact to "follow up on the comments of any woman who spoke in order to minimize their experiences of isolation."⁵⁹ The way the system is constructed women must put forth additional efforts to neutralize the negative impact. "For even if women aspire to the mainstream model, they are always reminded by the ideology buried in law's dichotomies, that to be female in law is to be associated with the non-legal."⁶⁰ Therefore, when law school fails to recognize the attributions of female students, women must create ways to integrate the "female voice."

F. *Ranking and The Evaluation of Success*

A simple number demonstrates one's success and perceived value in law school. However, "[a]t least one identifiable group of law students suffers from being ranked, rather than well-educated."⁶¹ When the "law school unintentionally uses a male-oriented baseline to measure male/female differences,"⁶² women fare worse than men. A woman's rank represents more than her performance at mastering the law; it is a demonstration of her ability to adapt to the male prescribed norms and values dominating the law school hierarchy.

When women are ranked utilizing male standards, they must learn to adapt the male view and perspectives dominating legal discourse, while also mastering the law. Where "[a]ll women have finally been welcomed into the [l]aw [s]chool's hierarchy . . . it seems that a significant number are welcome to stay at the bottom."⁶³ For this reason, Linda Hirshman found it necessary

⁵⁶ Torrey et al., *supra* note 2, at 282.

⁵⁷ *Id.*

⁵⁸ *Id.* at 283.

⁵⁹ Guinier et al., *supra* note 3, at 44.

⁶⁰ Mary O'Brien & Sheila McIntyre, *Patriarchal Hegemony and Legal Education*, in *FEMINIST LEGAL THEORY* II 32 (Frances E. Olsen ed., 1995).

⁶¹ Guinier et al., *supra* note 3, at 89.

⁶² *Id.* at 80.

⁶³ *Id.* at 71.

to calculate and prepare a re-ranking of what U.S. News and World Report considers the "top" twenty law schools in America. Her rankings were based on a woman's potential, where women did not make law review at a majority of the elite schools Hirshman reviewed.⁶⁴

Evaluating a woman's success using a male-dominated baseline reinforces the gendered hierarchy of law schools. Men and women entering law school with virtually equal credentials are distinguished at the end of the first year, with men receiving significantly better grades, an advantage that they maintain until graduation.⁶⁵ The way the current legal system operates penalizes women who maintain their feminine identity, where "men [are] three times as likely as women to be in the top tenth of the class after their first year, although both sexes entered law school with virtually identical stellar grade point averages and law school admissions test scores."⁶⁶

Even male students have recognized the advantage they have over women in law school. "Women were perceived as 'Q-absorbing' buffers, with Q ("Qualified") being the lowest passing grade on formal and informal grading curves."⁶⁷ The legal system has strengthened the gendered hierarchy by continuing to use a male standard by which to judge all students; this standard allows male students, and those able to adapt a male perspective, to step on those resisting the hierarchy.

Some have suggested that the disparity in high grades between male and female law students is due to their backgrounds because men probably come from a more rigorous undergraduate education, such as the hard sciences, that better prepares them for the rigors of law school; however, "when controlled for incoming demographics, gender alone predicted third-year law school class rank."⁶⁸ When men and women enter law school with similar undergraduate grades and comparable Law School Admissions Test scores, there must be something inherently wrong with an education system that detrimentally impacts such a large portion of its students.

There are many female lawyers and judges that are well-respected in the community, therefore it is not that women are ill-equipped to practice law, but that law schools err when evaluating a woman's worth by judging her according to male values. A woman's care ethic and the "female voice," deemed inappropriate in legal academia, are valuable to the legal field where the ability to negotiate, be compassionate, and relate to the individual, as opposed to a particular legal rule, make an effective advocate. There are many factors that make a lawyer a good advocate and the process of law

⁶⁴ Torrey et al., *supra* note 2, at 287.

⁶⁵ Guinier et al., *supra* note 3, at 23.

⁶⁶ Torrey et al., *supra* note 2, at 268.

⁶⁷ Guinier et al., *supra* note 3, at 31.

⁶⁸ *Id.* at 55.

school ranking does not consider many of these factors.

VI. CONCLUSION

Women entering law school have two choices: they can either "assimilate or change the institution."⁶⁹ Why should female law students be forced to make such a choice? At what point will students demand that the law school structure change to adapt to the presence of women? Some have said "that perhaps women are not suited to law school or should simply learn to adapt better to its rigors, [others] are inclined to believe that it is law school – not the women – that should change."⁷⁰

The way law schools currently operate are "like a club, and that 'club members expect women to change and adapt – to become more like men – in order to join the club.'"⁷¹ The time has come for those maintaining the club as 'men's only' to realize that the representation of women in law school is not outweighed by men, and that it is time that not only students learn to resist the hierarchy, but those that perpetuate it learn to resist such a damaging structure.

The current status of legal education continues to perpetuate male dominance in law and in society. Legal education favors men over women in nearly every facet of its structure. There is no excuse for such disparity when there is no evidence that continuing such subordination is necessary for the existence of the legal profession. Female students and professors alike should stand together and protest this continued subordination of women.

⁶⁹ Farley, *supra* note 16, at 351.

⁷⁰ Guinier et al., *supra* note 3, at 6.

⁷¹ Gaber, *supra* note 4, at 169.