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Succeeding in Law School: A Comparison of Woman's Experience at Brooklyn Law School and the University of Pennsylvania

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SUCCEEDING IN LAW SCHOOL:
A COMPARISON OF WOMEN'S EXPERIENCES
AT BROOKLYN LAW SCHOOL AND THE
UNIVERSITY OF PENNSYLVANIA

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Brian Tomko **
Ivan Yip ***

INTRODUCTION · 516

I. THE EDUCATIONAL EXPERIENCES OF MEN AND WOMEN AT
BROOKLYN LAW SCHOOL · 521

A. *Men and Women Entered Brooklyn Law School with
Equivalent Credentials and Aspirations; They Left with
Equally Impressive Academic Achievements* · 521

B. *The Learning Environment at Brooklyn
Law School* · 524

1. In and Out of the Classroom: Do Men
and Women Behave Differently? · 524
2. The Role of Gender in the Learning
Environment: Large or Small? · 525
3. Feelings About Law School: Does
Gender Make a Difference? · 529
4. Class Participation and Symptoms of
Distress: Are They Linked? · 531
5. A Historical Perspective: How Did
Women Fare Before the Law School's
"Reinvention"? · 533

II. THE BROOKLYN DATA IN COMPARATIVE PERSPECTIVE · 534

A. *Law School Experience and Academic
Performance: Is There a Link?* · 534

B. *The Impact of Educational Environment* · 537

C. *Issues for Further Research* · 540

CONCLUSION · 543

APPENDIX A · 544

APPENDIX B · 545

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INTRODUCTION

In *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*,¹ Professors Guinier, Balin, Fine, and their research colleagues (hereinafter the Penn researchers) portray a law school experience deeply stratified by gender. Based on survey and focus group data, the Penn researchers demonstrate that women at the University of Pennsylvania Law School were significantly less likely than men to be active participants in the classroom, and more likely to experience both discomfort with their class performance and alienation from the learning environment.² Despite equal entrance credentials, these women graduated with significantly less impressive grades and fewer honors.³ They were also more likely to have abandoned their early career goals by graduation.⁴

In order to explain their findings, the Penn researchers hypothesize a link between academic performance and classroom experience.⁵ They also hypothesize that women were disadvantaged within the law school's informal learning structure as a result of both the proportional scarcity of women with powerful institutional roles and the comparative discomfort of women students in approaching the largely male faculty outside of class.⁶ Based on these hypotheses, the Penn researchers urge "a reinvention of the law school" that would promote women's academic success by altering the learning environment.⁷ More specifically, they recommend the expansion of opportunities for relationships with women mentors,⁸ and (particularly during the first year) curricular reforms—smaller classes, cooperative learning techniques, and other non-Socratic classroom methods—that would "make the learning process more accessible to, and respectful of, female students."⁹

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1. Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).
 2. Guinier et al., *supra* note 1, at 32–37.
 3. Guinier et al., *supra* note 1, at 21–30.
 4. Guinier et al., *supra* note 1, at 39–41.
 5. Guinier et al., *supra* note 1, at 62.
 6. Guinier et al., *supra* note 1, at 71–80.
 7. Guinier et al., *supra* note 1, at 100.
 8. Guinier et al., *supra* note 1, at 92.
 9. Guinier et al., *supra* note 1, at 92. The researchers' curricular recommendations are detailed *infra* at 92–98.

While the Penn researchers were the first to report gender disparity in law school grades and honors, several other investigators had previously reported that women law students participated in the classroom less often and experienced lower self-esteem than did men.¹⁰ The Penn researchers' hypothesis of a link between law school experience and academic results would lead one to predict that women are academically disadvantaged at *all* of these institutions—a prediction supported by preliminary results from a Law School Admissions Council (LSAC) survey of ninety law schools.¹¹

The Penn and LSAC findings on women's underachievement in law school pose a serious challenge to legal educators: law schools must offer women an equal opportunity to succeed, but cannot do so unless and until legal educators understand the sources of women's disadvantage. While the Penn researchers' explanatory hypothesis of a causal link between academic experience and performance is plausible, it is unproven. Research in other educational contexts has also failed to demonstrate such a link. For example, adolescent girls experience lower self-esteem and participate less often in the classroom than their male peers,¹² but nonetheless obtain, on average, better grades.¹³

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10. See, e.g., Taunya L. Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988) [hereinafter Banks, *Early Study*]; Taunya L. Banks, *Gender Bias in the Classroom*, 14 S. ILL. U. L.J. 527 (1990) [hereinafter Banks, *Expanded Study*]; Robert Granfield, *Contextualizing the Different Voice: Women, Occupational Goals, and Legal Education*, 16 L. & POL'Y 1 (1994); Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-90); Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311 (1994); 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 (1988); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).
 11. See Dale Russakoff, *Lani Guinier Takes Law School to Task as "Hostile" to Women: Study Says Penn Men Score Higher than Equally Qualified Female Students*, WASH. POST, Jan. 29, 1995, at A3 (reporting that preliminary results from LSAC survey of 6000 students at 90 law schools show that men outperform women with comparable entrance credentials by the equivalent of one grade in one of eight courses in the first year).
 12. See, e.g., MYRA SADKER & DAVID SADKER, *FAILING AT FAIRNESS: HOW AMERICA'S SCHOOLS CHEAT GIRLS* 77-97 (1994); Susan M. Bailey, *The Current Status of Gender Equity Research in American Schools*, 28 EDUC. PSYCHOLOGIST 321 (1993); Katherine Canada & Richard Pringle, *The Role of Gender in College Classroom Interactions: A Social Context Approach*, 68 SOC. EDUC. 163 (1995); John A. Daly et al., *Question-Asking Comfort: Explorations of the Demography of Communication in the Eighth Grade Classroom*, 43 COMM. EDUC. 37 (1994); Sarah H. Sternglanz & Shirley Lyberger-Ficek, *Sex Differences in Student-Teacher Interactions in the College Classroom*, 3 SEX ROLES 345 (1977).
 13. See VALENA W. PLISKO & JOYCE D. STERN, NAT'L CTR. FOR EDUC. STAT., *THE CONDITION OF EDUCATION* 50-52 (1985) (high school girls had higher average

This Article reports our findings from a replication of the Penn research conducted at Brooklyn Law School in order to test the experience-performance link reported by the Penn researchers. Brooklyn Law School offers an ideal setting for a test of the Penn research because it already has adopted most of the reforms that the Penn researchers believe would reduce women's alienation from the learning environment and thus improve their academic performance. First, Brooklyn Law School, as compared to other American law schools, has a large proportion of women faculty. During the 1994-95 academic year, thirty-seven percent of its tenured and tenure-track faculty and forty-five percent of its full faculty were women.¹⁴ Second, Brooklyn has already adopted most of the Penn researchers' recommendations regarding curricular restructuring in the first year. Although Brooklyn retains the traditional, large class for much of its first-year curriculum, each student also is enrolled in a small (fifteen to seventeen students) legal writing class and a somewhat larger (thirty-one to thirty-four students) "seminar section" for one of the standard, substantive first-year courses. Grading in the seminar section is not exclusively exam-based and faculty members who teach these courses use varied teaching techniques, including cooperative approaches, to provide a counterweight to the more traditional approach of the larger first-year classes.¹⁵ Even within the larger classes,

grades than boys in all subjects); SADKER & SADKER, *supra* note 12, at 221 (boys receive lower average grades than girls from elementary school through high school; boys also repeat grades more frequently and drop out more often); *Gender Gap Continues to Close on S.A.T.s*, N.Y. TIMES, Aug. 25, 1994, at A12 (women earn higher average college grades than men, despite lower average S.A.T. scores); *see also* Helen M. Berg & Marianne A. Ferber, *Men and Women Graduate Students: Who Succeeds and Why?*, 54 J. HIGHER EDUC. 629, 644 (1983) (women graduate students in physical and biological sciences expressed significantly less self-confidence than men and were less likely to have been treated by a male faculty member as a junior colleague, but were equally likely to have obtained fellowships and high grades).

14. Both of these counts exclude adjunct faculty. For additional reports examining the percentages of women faculty at law schools, see Rick L. Morgan, *A Review of Legal Education in the United States, Fall 1994*, 1995 A.B.A. SEC. ON LEGAL EDUC. & ADMISSIONS TO B. 4-63 (showing percentages of women on faculties at ABA-approved law schools during the Fall 1994 semester) and Linda R. Hirshman, *Law Schools Where Women Can Excel*, GLAMOUR, Sept. 1995, at 122 (reporting that at none of the twenty law schools ranked most highly by *U.S. News and World Report* did women comprise more than 28% of the tenured and tenure-track faculty; at half of these schools the percentage of women faculty was at or below 20%).
15. For a more detailed description of the methods of instruction at Brooklyn Law School, see BROOKLYN LAW SCHOOL, 1994-95 BULLETIN 40. While faculty who

faculty surveys suggest that the Socratic method is by no means the exclusive approach or even, in some classes, the dominant one; many faculty members teaching first-year classes use problems, simulations, "gaming" techniques, negotiation, and other non-Socratic teaching methods as key features of their pedagogy.¹⁶

Because Brooklyn Law School already provides women with most of what the Penn researchers urge others to offer, it presents an excellent testing ground for their hypotheses. With the cooperation of Brooklyn Law School Dean Joan G. Wexler, we undertook such a test. We investigated the grades and honors obtained by men and women in the same graduating classes studied at Penn (1990–93), as well as the classes of 1994 and 1995.¹⁷ During the Spring 1995 semester, we also administered the Penn survey in abbreviated form to approximately one-third of Brooklyn's first-year students and a somewhat smaller proportion of second- and third-year students.¹⁸ Although we did not

teach the smaller sections do so by choice, they also are disproportionately female. The legal writing faculty also is disproportionately female. For example, in 1994–95 only 20% of full-time writing instructors were male.

16. For descriptions by Brooklyn Law School faculty of non-Socratic methods used in first-year courses, see Stacy Caplow, *Autopsy of a Murder: Using Simulation to Teach First Year Criminal Law*, 19 N.M. L. REV. 137 (1989); Michael Gerber, *Live Clients and Integrated Writing*, SECOND DRAFT (bulletin of the Legal Writing Inst.), June 1991, at 5; Jennifer L. Rosato, *All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom*, 45 J. LEGAL EDUC. 568 (1995); Elizabeth M. Schneider, *Structuring Complexity, Disciplining Reality: The Challenge of Teaching Civil Procedure in a Time of Change*, 59 BROOK. L. REV. 1191 (1993); Elizabeth M. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. LEGAL EDUC. 41 (1987); Marilyn R. Walter, *Retaking Control Over Teaching Research*, 43 J. LEGAL EDUC. 569 (1993). See also BROOKLYN LAW SCHOOL, BROOKLYN LAW SCHOOL SURVEY ON TEACHING TECHNIQUES (1995) (on file with authors).
17. The Penn researchers had performance data for all three years of law school for the classes of 1990 and 1991. They relied on two years of data for the class of 1992 and one for the class of 1993. Guinier et al., *supra* note 1, at 8. We had complete data for each class.
18. The complete text of the Brooklyn survey is attached as Appendix B. The survey was administered in April 1995, and produced 328 usable questionnaires. Of the respondents, 195 were in their first year of law school, 39 in their second year, and 94 in their third year; 156 were men and 171 were women.

Unlike the Penn researchers, who relied on voluntary responses to the questionnaire, we administered the survey instrument to all students in attendance in selected courses, during class time. This choice may have influenced our results and may explain some of the disparity in our results as compared to those of the Penn researchers. See discussion *infra* part II.B.

conduct focus groups as did the Penn researchers, the survey instrument included an open-ended question, identical to that contained in the Penn questionnaire, offering students the opportunity to describe any law school experiences “that made you uncomfortable for gender-based reasons.”

We hypothesized that the experience of women students at Brooklyn Law School would be different from that of their peers at Penn, and on many measures our hypothesis proved accurate. Women students were *not* comparatively disadvantaged with respect to grades or academic honors.¹⁹ During the years we investigated, women performed as well as their proportionate representation in the class would have led one to predict.²⁰ Based on the survey responses, women were just as likely as men to participate in the law school’s informal learning environment through out-of-class contacts with faculty,²¹ and very few of them believed that gender affected the nature or content of professor-student interaction more than occasionally.²²

The Brooklyn women nonetheless exhibited attitudes toward the classroom that were significantly different from those of their male colleagues—and similar to those described by the Penn researchers. Brooklyn women reported significantly less voluntary classroom participation and more discomfort with their level of participation than did Brooklyn men.²³ Women also reported significantly higher rates of anxiety, depression, sleeping difficulties, and crying.²⁴

We believe our findings fill important gaps in the Penn research. Although the Brooklyn data provide some support for the reinvention of legal education urged by the Penn researchers, they neither prove nor disprove the claim of a causal link between classroom experience and academic achievement. Brooklyn women’s academic performance was comparable to that of men despite their lesser classroom participation and satisfaction. But the “gap” in men’s and women’s experiences at Brooklyn also was much smaller than that reported at Penn, leaving open the possibility that gender disparity in academic experience may affect academic performance when extreme.

19. See discussion *infra* part I.A.

20. See discussion *infra* part I.A.

21. See discussion *infra* part I.B.1.

22. See discussion *infra* part I.B.2.

23. See discussion *infra* part I.B.3.

24. See discussion *infra* part I.B.3.

In the balance of this Article we describe our findings and conclusions in more detail. Part I describes our findings on the academic performance and experience of men and women at Brooklyn Law School. Part II interprets the data based on a comparison of our findings with those obtained at Penn and by other researchers.

I. THE EDUCATIONAL EXPERIENCES OF MEN AND WOMEN AT BROOKLYN LAW SCHOOL

A. Men and Women Entered Brooklyn Law School with Equivalent Credentials and Aspirations; They Left with Equally Impressive Academic Achievements

Like the University of Pennsylvania Law School, Brooklyn Law School relies heavily on an index composed of an applicant's LSAT score and weighted grade point average in making admissions decisions. Gender is not taken into account. We asked the Admissions Office to review the index scores of the classes of 1990–95; based on that review, the men and women who graduated in these classes entered Brooklyn Law School with equally impressive grades and LSAT scores.²⁵

The survey responses suggest that men and women also entered the Law School with very similar career aspirations.²⁶ Among first-year students, the top career goal of both men and women was private practice.²⁷ Brooklyn's first-year women, unlike those at Penn, were not significantly more likely than men to select "government/public

25. Mean admissions index scores for men and women in the classes of 1990–95 were compared using two-tailed *t* tests, the standard method for comparing group means. See, e.g., CELESTE MCCOLLOUGH & LOCHE VAN ATTA, *STATISTICAL CONCEPTS: A PROGRAM FOR SELF-INSTRUCTION* 233–44 (1963). Women's average scores exceeded those of men in four of six years. In no year was the difference larger than 3.0%; in no year was the difference between men's and women's average scores significant at the .05 confidence level (1990 *t*=1.667 *p*<.10; 1991 *t*=.136 *p*<.90; 1992 *t*=.624 *p*<.60; 1993 *t*=-1.868 *p*<.10; 1994 *t*=-.637 *p*<.60; 1995 *t*=1.247 *p*<.30). In two years the difference was significant at the .10 confidence level; in one of these years the men's average was higher, in the other, the women's was higher.

26. It is possible that the students' career goals had already shifted somewhat during the first year. We conducted the survey in April 1995, during the last month of classes. We did not ask students to identify their career goals at the time they entered law school or to state whether their career goals had shifted over the first few months of law school.

27. Among first-year students, 44.8% of men and 37.8% of women selected "law firm or solo practice."

interest" as a career choice,²⁸ but this difference may result simply from variation in survey methodology.²⁹ By the end of the third year, however, gender-based differences in career goals were more marked, with women approximately three times more likely than men to select "business/corporate legal department" or "government/public interest" career goals.³⁰

Despite these divergent career aims, men and women emerged from the Law School with equally impressive grades and credentials.³¹ While we did not track grades by year, at the time of graduation neither women's representation in the top half of the classes of 1990-95 nor their likelihood of graduating with a summa, magna, or cum laude degrees differed significantly³² from their proportionate representation in these graduating classes.³³ Women were also proportionately represented on the *Brooklyn Law Review* and in the Moot Court Honor Society,

28. Among first-year students, 44.8% of men and 37.8% of women selected "law firm or solo practice," 27.6% of men and 28.6% of women selected "business/corporate legal department," 24.1% of men and 27.6% of women selected "government/public interest," and 3.4% of men and 6.2% of women selected "academic" or "job unrelated to law." By contrast, 33.0% of first-year women and 8.0% of first-year men at Penn reported public interest law as a career goal. Guinier et al., *supra* note 1, at 40 tbl.XII.
29. We asked students to select a single career goal, while the Penn researchers allowed students to check multiple career goals. Guinier et al., *supra* note 1, at 40. As one would expect from first-year students, who have often not narrowed their career interests, Penn's men and women students frequently checked more than one interest area. See Guinier et al., *supra* note 1, at 40 tbl.XII.
30. Among third-year students, 60.5% of men and 43.5% of women selected "law firm or solo practice;" 4.7% of men and 15.2% of women selected "business/corporate legal department;" 11.6% of men and 30.4% of women selected "government/public interest;" and 23.9% of men and 10.9% of women selected "academic" or "job unrelated to law." The differences in men's and women's responses approached, but did not quite achieve, significance at the .05 confidence level ($p=.0519$).
31. Brooklyn employs an A-F grading scale, with a mandatory curve applicable throughout the three years of law school. For a complete description of the grading curve, see BROOKLYN LAW SCHOOL, STUDENT REGULATIONS HANDBOOK 1994-96 5-7 (1994).
32. The disproportion favoring women honors graduates was significant at a low confidence interval (chi-square=3.1458 d.f.=1 $p<.10$).
33. This is also true if the classes of 1990-93 (those studied at Penn) are looked at in isolation. In these four classes, women comprised 46.0% of graduates ($n=1721$), 47.3% of graduates in the top 50% of the class ($n=861$), 47.3% of honors graduates ($n=178$), 43.1% of law review graduates ($n=109$), 55.0% of law review executive board graduates ($n=29$), 45.6% of moot court honor society graduates ($n=226$), and 50.0% of moot court honor society executive board graduates ($n=36$).

from which participants in the various moot court competitions are selected.³⁴

TABLE 1

WOMEN'S ACADEMIC PERFORMANCE AT BROOKLYN LAW SCHOOL
1990-95, BY YEAR OF GRADUATION

Academic Performance Category	Women's Percentage in Category, by Year of Graduation						1990-95 Percentage (n=)
	'90	'91	'92	'93	'94	'95	
Graduating class	49	47	46	42	41	43	45.0 (n=2577)
Top 50%	51	48	48	43	42	45	46.7 (n=1288)
Honors graduates	61	39	45	48	49	62	50.4 (n=270)
Law Review members	33	42	64	33	52	57	47.0 (n=164)
Law Review exec. board	50	40	67	60	25	40	48.3 (n= 29)
Moot court honor soc.	45	42	52	43	55	45	46.9 (n=339)
Moot court honor soc. exec. board	44	33	50	83	60	70	54.9 (n= 51)

In short, women at Brooklyn Law School did every bit as well as men. While we did not formally examine the performance of women who will graduate after 1995, there is no sign of any change: women who entered the Law School in September 1994 were also

34. See Table 1. Because the percentage of women on journals and the Moot Court Honor Society varied greatly due to the comparatively small size of these organizations, we also tracked these results over the entire 1985-94 period. These results (which also include membership on the *Brooklyn Journal of International Law*) are displayed in Appendix A.

proportionately represented in the top ten and fifty percent of the class at the end of their first year.³⁵

B. The Learning Environment at Brooklyn Law School

1. In and Out of the Classroom: Do Men and Women Behave Differently?

The relatively equal academic performances of men and women students at Brooklyn Law School were matched by relatively equal participation in the Law School's informal learning environment. Among both first-year and upper-class students who participated in the Spring 1995 survey, men and women reported extremely similar rates of contact with faculty members outside the classroom.³⁶

Nor did the qualities students admired in their teachers vary significantly by gender. In all years, students of both sexes were most likely to admire clarity of expression; women were not significantly more likely than men to select interpersonal skills such as "treats students with respect" or "open to questions and available to help with difficulties."³⁷ Being a "challenging" teacher was ranked lowest by both men and women in all years.³⁸

On classroom participation, the results were more mixed. Following the approach of the Penn researchers, we asked students how often

35. In 1994, 48.6% of entering students (n=448) were women. At the end of the year, 48.9% of students in the top 10% of the class and 50.0% of students in the top 50% of the class were women.

36. 22.2% of all women, 23.3% of first-year women, and 20.6% of upper-class women reported approaching a professor after or outside of class at least monthly, as compared to 19.2% of all men, 22.0% of first-year men, and 15.3% of upper-class men. The rate of contact with faculty outside of class varied insignificantly by year in law school.

37. In contrast to the Penn researchers, who asked students to list three qualities they admired, Guinier et al., *supra* note 1, at 34, we asked students to choose only the quality they admired most. Across all three years, 44.4% of men and 44.8% of women selected "expresses ideas clearly," 25.5% of men and 21.2% of women selected "knowledgeable about subject matter," 12.6% of men and 15.2% of women selected "open to questions and available to help," and 9.7% of men and 11.5% of women selected "treats students with respect."

38. Only 4.6% of men and 7.3% of women selected "challenging" as the quality they admired most in a professor.

they asked questions and volunteered to participate in discussion.³⁹ Looking across all three years, women reported a significantly lower rate of classroom questioning than did men.⁴⁰ While the difference was most extreme among upper-class students, first-year women were also significantly more likely than men to report that they “never” or “only occasionally” asked questions.⁴¹ Women were significantly more likely than men to report that they “never” or “only occasionally” volunteered to participate in classroom discussion as well,⁴² although here a significant gender-based disparity emerged only after the first year.⁴³

2. The Role of Gender in the Learning Environment: Large or Small?

Despite these gender-based differences in class participation levels, Brooklyn's male and female students both described a classroom environment in which gender did not play a prominent role. Although first-year female students and upper-class male students were somewhat more

39. Reported frequency rates for questioning and other voluntary participation were strongly correlated for both men and women ($p < .001$).

40. Across all three years, 70.8% of women and 52.6% of men reported that they “never” or “only occasionally” asked questions in class ($p = .021$).

41. Among upper-class students, 76.5% of women and 53.8% of men reported that they “never” or “only occasionally” asked questions in the classroom ($p = .006$), as compared to 67.0% of first-year women and 52.2% of first-year men ($p = .037$). For first-year students, a significant gender-based difference emerged only when the five possible response categories were combined into two (i.e., “never” with “only occasionally,” and “at least once a month” with categories indicating greater frequency). When all five possible response categories were included in the analysis, the gap between the upper-class students' responses varied significantly by gender ($p = .022$), but that of first-year students did not.

42. Across all three years, 69.6% of women and 58.3% of men reported that they “never” or “only occasionally” volunteered to participate in the classroom ($p = .034$). A significant gender-based difference only emerged, however, when the five possible response categories were combined into two (i.e., “never” with “only occasionally,” and “at least once a month” with categories indicating greater frequency). When all five possible response categories were included in the analysis, the gap between the men's and women's participation rate was not significant in any year or when all years were aggregated.

43. Among upper-class students, 71.6% of women and 49.2% of men reported that they “never” or “only occasionally” volunteered in class ($p = .008$) as compared to 68.3% of first-year women and 64.4% of first-year men. The difference in response patterns was again insignificant when all five response categories were included in the analysis.

likely to report being called on at least once a month,⁴⁴ men and women across all three years of law school reported extremely similar rates of involuntary class participation.⁴⁵ Both male and female students overwhelmingly believed that classroom interactions were “never” or “only occasionally” affected by either the sex of the professor or of the student;⁴⁶ only about one in five believed that students were more tolerant of in-class comments by one or another sex.⁴⁷ Looking across all three years of law school, the response rates of men and women did not differ significantly, but, among upper-class students, women were significantly more likely than men to report that the sex of the student (but not of the professor) was at least occasionally relevant to the tone or content of classroom discussion.⁴⁸ Upper-class men were approximately twice as likely as women to report that a student’s sex was “never” relevant to classroom discussion; women overwhelmingly reported that a student’s sex “occasionally” was relevant.⁴⁹

Responses to the open-ended question included on the survey instrument also suggest that most Brooklyn Law School students, whether male or female, perceive the learning environment to be relatively gender-neutral.⁵⁰ Only twenty-three percent of the student

44. Twenty-six percent of first-year women reported being called on weekly or more often as compared to 15.9% of first-year men. Only 14.7% of upper-class women reported being called on weekly or more often as compared to 24.6% of upper-class men.

45. Across all three years, 20.1% of men and 22.1% of women reported being called on involuntarily at least once a month.

46. Across all three years, 85.8% of men and 82.4% of women reported that the nature and content of classroom interactions are “never” or “only occasionally” affected by the sex of the professor. Similarly, 89.4% of men and 88.9% of women reported that the nature or content of classroom interactions between professors and students are “never” or “only occasionally” affected by the sex of the students.

47. Across all three years, 79.2% of men and 83.9% of women found no difference in toleration of in-class comments based on gender.

48. $p=.040$.

49. While 17.9% of upper-class women reported that gender “never” made a difference, 68.7% reported that it “occasionally” did. Among upper-class men, 35.9% reported that gender “never” made a difference and 46.9% reported that it “occasionally” did. Among first-year women, 38.5% reported that a student’s gender “never” made a difference while 51.9% reported that it “occasionally” did. Among first-year men, 44.8% reported that gender “never” made a difference and 49.4% reported that it “occasionally” did.

50. The question invited students to describe “any acts or comments made by a professor or fellow student you have witnessed or experienced at the law school that made you uncomfortable for gender-based reasons.” See *infra* Appendix B.

respondents answered the open-ended question.⁵¹ Of the seventy-seven who did respond, ten wrote nothing related to the topic of inquiry and eighteen wrote to report the *lack* of any perceived gender bias.⁵² Student A, for example, wrote that “[a]s a woman, I really do not think there is a gender problem here at Brooklyn,” while Student B noted that “relatively speaking, compared to college, this place is gender neutral.” Among the forty-nine responses that indicated some experience of gender bias at the law school, approximately half described either one isolated incident (eight) or the behavior of one particular professor or student (seventeen). Student C, for example, noted that “during Moot Court a female Professor/Judge was obviously very harsh to me but kind to my female opponent,” and Student D wrote that “a student in one of my classes, during a discussion about state-funded all-female institutions of higher learning mumbled (audibly) under his breath that women are stupid.” And Student E had “noticed one professor that seems to be nicer to guys out of class. With girls, only if they participate in class does he act nicely to them out of class.”

The remaining half of the comments described experiences involving more than one individual or incident, but only six reported a pattern of gender-based conduct.⁵³ The remainder voiced diverse, and rarely seconded, complaints. Student F, for example, was the only one to complain that “certain strong advocates of women’s rights need to

51. 24.0% (n=194) of first-year and 23.0% (n=134) of upper-class students wrote something in response to the open-ended question.

52. Four students complained about a matter unrelated to gender (for example, difficulties confronted by students of color), two students scribbled nonsense, one wrote “no time” and three wrote only to note that the survey was a waste of time.

The most common gender-related complaint was of excessive interest in attractive women students by a few male professors. Although we did not ask students to identify their gender on the open-ended question, this appeared impressionistically to be the most common complaint by both men and women.

53. One student noted that “many female professors overcompensate for gender bias”; another felt that “female professors seem to remember the names of male students more often than female students; vice versa for male professors”; a third wrote, “I feel no gender bias in classroom situations, however, I feel that male professors felt comfortable” and favor male students outside of class and during office hours”; a fourth “sense[d] a much higher degree of animosity from fellow students over long-winded or imprecise comments made by female students than male—[there is] snickering, joking, talking instead of listening when she speaks up”; a fifth wrote that, “there exists a general, prevailing belief at BLS (carried over from society at large) that women, by and large, are not ‘as good’ (intellectually, etc.) as men. Of course, not everyone at BLS entertains this notion. But, I witness many women resorting to flirtatious behavior with other students and the professors.”

moderate their views in the classroom.” Nor did the comments necessarily conform to the pattern of male bias against women. Student G, for example, complained that “I have a female professor who is very gender-biased against female students. She speaks more deferentially and respectfully toward male students and has on occasion been outright rude and condescending toward female students almost to the point of badgering them.”

While both the survey and open-ended responses suggest that Brooklyn Law School offers students a fairly benign learning environment in which gender-based discrimination is experienced only occasionally, it is important to note that almost a quarter of the women reported having experienced inappropriate treatment based on gender, a rate more than double that of men.⁵⁴ Men and women also differed significantly in their perceptions of professorial behavior and favoritism. Although approximately three-quarters of both men and women students reported that gender was not relevant to the difficulty of questions asked in the classroom,⁵⁵ and two-thirds reported that men and women were called on with equal frequency,⁵⁶ accorded equal class time,⁵⁷ and given equal numbers of follow-up questions,⁵⁸ there were still significant, gender-based perceptual differences. While the percentage of students reporting that gender made a difference in any of these categories did not exceed fifteen percent,⁵⁹ to the extent that gender disparities were perceived, women overwhelmingly reported that men received disproportionate attention, while men overwhelmingly reported

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54. While 23.3% of female respondents reported inappropriate gender-based behavior, only 10.9% of male respondents reported such behavior ($p=.0032$).
 55. Across all three years, 76.3% of men and 77.8% of women reported that students of both sexes are asked questions of equal difficulty; 17.3% of men and 17.5% of women expressed no opinion.
 56. Across all three years, 65.6% of men and 64.1% of women reported that students of both sexes are called on with equal frequency; 24.0% of men and 20.6% of women reported no opinion.
 57. Across all three years, 71.8% of men and 67.8% of women reported that both sexes received equal class time; 19.9% of men and 18.1% of women reported no opinion.
 58. Across all three years, 66.7% of men and 68.4% of women reported that both sexes received equal numbers of follow-up questions; 22.4% of men and 19.9% of women reported no opinion.
 59. The largest percentage indicating gender disparities were in answer to the amount of class time accorded each gender (13%), and the frequency with which students of each gender are called on (13%).

the opposite.⁶⁰ As a result of this strong link between the respondent's gender and the direction of reported bias, the overall response patterns to many of these "biased attention" questions varied significantly by gender,⁶¹ even though the vast majority of students reported equal attention or no opinion at all. Similar but stronger gender-based disparities were apparent in responses to questions about favoritism by male and female professors. Men were more than five times as likely as women to report that female professors favor female students;⁶² women were more than three times as likely as men to report male professorial favoritism toward male students.⁶³

3. Feelings About Law School: Does Gender Make a Difference?

Gender-based differences in feelings about the law school experience were also significant, and far more commonly reported than were differences in the role of gender in the learning environment. More than forty percent of women, as compared to only a quarter of men, reported discomfort with their level of voluntary classroom participation.⁶⁴ Although both men and women were considerably more likely to report comfort in their last year of law school than in their first, the "comfort gap" was apparent and significant in both the first and last years of law

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60. For example, 1.9% of men and 11.7% of women reported that men were given more class time than women, while 6.4% of men and 2.3% of women reported that women were given more class time than men.
 61. Responses varied significantly by gender for the questions regarding bias in class time allotted students who ask questions or volunteer answers ($p=.0255$), bias in frequency of being called on ($p=.0255$), and bias in class time allotted students who are called on ($p=.0023$). Responses did not vary significantly by gender for the survey questions regarding follow-up questions and question difficulty.
 62. $p<.001$. Across all three years, 17.6% of men and 3.5% of women reported that female professors favor female students; 4.6% of men and 12.4% of women reported that female professors favor male students; 38.6% of men and 59.4% of women reported that female professors treat students equally; 39.2% of men and 24.7% of women expressed no opinion.
 63. $p=.0002$. Across all three years, 6.5% of men and 21.8% of women reported that male professors favor male students; 13.1% of men and 4.7% of women reported that male professors favor female students; 49.7% of men and 55.3% of women that reported that male professors treat men and women equally; 30.7% of men and 18.2% of women expressed no opinion.
 64. Across all three years, 41.9% of women and 25.3% of men expressed discomfort ($p=.0017$).

school.⁶⁵ Among first-year students, a comfort gap also was apparent in reported responses regarding involuntary classroom participation,⁶⁶ although this disparity disappeared by the third year of law school.

Attitudes toward competition varied significantly by gender as well, with women more likely to report that students are “always” competitive.⁶⁷ And while the majority of both sexes reported that men and women were equally competitive, perceived disparities were again strongly linked to gender: seventy-six percent of students reporting that men were more competitive were women; sixty-one percent of those describing women as more competitive were men.⁶⁸

Men and women also differed in their reported levels of anxiety, depression, and related behaviors. Significantly more women than men reported experiencing depression or anxiety at least monthly.⁶⁹ Across all three years, women were far more likely to report frequent crying⁷⁰ and somewhat more likely to report sleeping difficulties.⁷¹ But, despite these differences, women were not more likely to report that they had sought counseling or psychiatric care for law school related concerns.⁷²

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65. Among first-year students, 30.3% of men and 46.2% of women expressed discomfort with their level of voluntary classroom participation ($p=.0246$); among third-year students, 15.6% of men and 36.7% of women expressed discomfort ($p=.0203$).
66. Among first-year students, 14.3% of men and 26.0% of women expressed discomfort with their level of involuntary classroom participation ($p=.044$).
67. $p=.0277$. Across all three years, 50.3% of women and 41.4% of men reported that students were “always” competitive; 48.0% of women and 50.3% of men reported that students were “sometimes” competitive; 1.2% of women and 3.2% of men reported that students were “never” competitive. The remaining 5.1% of men and 0.6% of women expressed no opinion.
68. $p=.0012$.
69. $p=.0059$. Of women, 67.1%, as compared to 54.5% of men, reported experiencing depression or anxiety at least monthly.
70. $p<.0001$. While 28.9% of women reported crying at least monthly, only 6.0% of men reported the same.
71. $p=.0165$. Sleeping difficulties at least once a month were reported by 49.4% of women and 43.7% of men. The largest gender-based disparity was in the proportion reporting that they never experienced sleeping difficulties (25.6% of men and 12.4% of women).
72. Only 6.5% of women and 7.7% of men reported seeking counseling or psychiatric care for law-school-related concerns.

4. Class Participation and Symptoms of Distress: Are They Linked?

Because women report the experience of depression more frequently than men outside of law school,⁷³ we reanalyzed our data in an attempt to understand the links between women's classroom performance and their greater tendency toward depression, anxiety, and related behaviors. We discovered that women's reported level of voluntary classroom participation was significantly related to their reported level of satisfaction: women who participated more frequently were significantly more likely to feel satisfied than those who did not.⁷⁴ Conversely, although women's reported *level* of voluntary classroom participation was not significantly related to depression, anxiety, or related behaviors, the report of *discomfort* with classroom participation was: women who were uncomfortable with their voluntary classroom performance were significantly more likely to report frequent crying,⁷⁵ depression, or anxiety⁷⁶ (but not sleeping problems or having sought counseling) than were women who expressed comfort. Discomfort with involuntary classroom participation was also significantly linked to symptoms of distress, with women reporting discomfort significantly more likely to report frequent crying⁷⁷ and sleeping problems.⁷⁸ And

73. See CHRISTINA HOFF SOMMERS, WHO STOLE FEMINISM? 250 (1994) (describing results of national study showing yearly prevalence of depression as 2.2% for men and 5.0% for women, and the lifetime rate as 3.6% for men and 8.7% for women). It is unclear whether these differences are indicative of differing levels of depression for men and women or the result of lesser willingness by men to report negative feelings: for example, men report depression less often than women but make successful suicide attempts far more often than do women. HOFF SOMMERS, *supra* at 161; see also Kent A. Pierce & Dwight R. Kirkpatrick, *Do Men Lie on Fear Surveys?*, 30 BEHAV. RES. THERAPY 415 (1992) (reporting results of two fear surveys administered to male and female college students; men's fear ratings increased markedly on second survey, before which they were told that their truthfulness could be independently evaluated through changes in their heart rate, while women's did not).

74. For the relationship between questioning frequency and satisfaction, $p < .001$. For the relationship between voluntary participation frequency and satisfaction, $p < .001$.

75. $p = .014$.

76. $p = .002$.

77. $p = .017$.

78. $p = .030$. The correlation between involuntary classroom participation satisfaction and the experience of depression or anxiety approached, but did not achieve, significance at the .05 confidence level ($p = .074$). Women who were dissatisfied with their

women who reported that students at the Law School were highly competitive were significantly more likely to report anxiety or depression than were women who did not.⁷⁹

The men's responses exhibited fairly similar patterns. Male depression and anxiety were significantly correlated with voluntary classroom participation discomfort.⁸⁰ Men reporting discomfort with involuntary classroom participation were significantly more likely to report frequent crying⁸¹ and sleeping problems.⁸² The men's perceptions of competition at the Law School were significantly related to reported sleeping difficulties,⁸³ but not to their level of crying, anxiety, or depression.

The data thus suggest that women law students' higher rate of reported anxiety, depression, and related behaviors is significantly related to their behavior in and perceptions of the classroom. Discomfort with classroom participation is more likely if classroom participation is infrequent. The experience of discomfort is linked to a higher likelihood of depression, anxiety, and related behaviors. What the data do not resolve is the direction of these links: it is possible that low participation produces discomfort, which in turn produces depression, but it is also possible that depression produces discomfort, which in turn produces low participation.⁸⁴

involuntary classroom performance were also significantly less likely to be comfortable with their voluntary performance ($p=.007$).

79. $p<.001$.

80. $p=.008$. Discomfort with voluntary participation also was significantly linked, among the male respondents, with frequent sleeping difficulties ($p=.022$), but not with frequent crying. As with the women, the men's reported rates of questioning ($p<.001$) and voluntary participation ($p<.001$) were significantly correlated with the experience of discomfort (those who experienced discomfort participated less), but the rates of questioning and voluntary participation were not significantly correlated with reported depression and anxiety.

81. $p=.019$.

82. $p=.037$. Like the women, men who were dissatisfied with their involuntary classroom performance were also significantly less likely to be comfortable with their voluntary performance ($p=.002$).

83. $p=.017$.

84. The data suggest that men and women use somewhat different coping strategies to deal with the anxiety of being called on in class. Men were significantly less likely to report frequent voluntary participation in the classroom, both in asking questions ($p=.002$) and contributing to discussion ($p=.051$), if they also reported discomfort with their involuntary classroom performance. Women's level of voluntary participation, on the other hand, was not significantly related to their involuntary performance comfort level.

5. A Historical Perspective: How Did Women Fare Before the Law School's "Reinvention"?

Intrigued by these initial results, we decided to examine the academic performance of women law students at Brooklyn in an era when women faculty were few in number and the first-year curriculum was an entirely traditional one. We selected the classes of 1977, 1978, and 1979 because women were well-represented in these classes but not on the faculty⁸⁵ and no curricular innovations had been introduced.

Our research on this group was, of necessity, more cursory. Because admissions data for these years were never computerized, we were unable to ascertain the entrance credentials of these classes by gender. Gender was not considered in admissions decisions during this time period, but we do not know whether this resulted in male and female cohorts with equivalent academic credentials. Nor could we ascertain anything about these students' classroom participation and perceptions of their law school experience.

What is clear is that women of this era were not disadvantaged in terms of grades and academic honors at the time they graduated. Indeed, women performed at a level significantly higher than that which their proportionate representation in these classes would lead one to predict. It is possible that the women's disproportionate success in the 1970s stemmed from better entry credentials; or women who entered law school during the 1970s may have been more highly motivated to succeed and thus more able to withstand a "chilly" environment.⁸⁶ Our data highlight women's academic success during this period, but do not explain it.

85. Women made up 30% to 40% of these graduating classes. Women faculty, however, averaged less than 13% of the total full-time faculty.

86. See Laura Mansnerus, *Men Found to Do Better in Law School than Women*, N.Y. TIMES, Feb. 10, 1995, at A25 (reporting that "limited evidence" suggests women law students received better grades than men during the 1960s and 1970s and that the "leading theory" to explain the disparity is "that women who went to law school in the 1960's and 1970's were an unusually determined group and unfazed by discrimination, having experienced it early on").

TABLE 2

WOMEN'S ACADEMIC PERFORMANCE
AT BROOKLYN LAW SCHOOL
1977-79, BY YEAR OF GRADUATION

Academic Performance Category	Women's % in Category, By Year of Graduation			Women's % in Category 1977-79 (n=)
	1977	1978	1979	
Graduating class	30	36	40	35.6 (n=891)
Top 50%	35	39	47	40.3 * (n=445)
Honors graduates	62	39	54	51.6 ** (n=95)
Law Review members	74	45	60	58.6 *** (n=87)
Moot court honor soc.	57	30	36	39.3 (n=28)

* p<.05 ** p<.01 *** p<.001

II. THE BROOKLYN DATA IN COMPARATIVE PERSPECTIVE

A. Law School Experience and Academic Performance: Is There a Link?

While the Penn researchers were the first to conduct a detailed investigation of gender differences in grades and academic honors,⁸⁷ their report builds on research at several other law schools demonstrating significant differences in the experiences of male and female law

87. Another pair of researchers had previously reported gender differences in the achievement of honors in two courses at one law school. Homer & Schwartz, *supra* note 10, at 30.

students. These earlier investigators, who collectively surveyed more than twenty diverse law schools, all reported that women voluntarily participated in classroom discussion much less often than their male colleagues.⁸⁸ Some also reported that women law students were significantly more likely than men to experience gender discrimination, dissatisfaction with their classroom performance, alienation from the educative environment, and low self-esteem.⁸⁹

The Penn researchers found all of these gender-based experiential differences coupled with significant, gender-based disparity in academic performance. They hypothesized that the two types of gender-based disparity are causally linked or, put somewhat differently, that men outperform women academically *because* many women feel excluded from the formal and informal educational structure of law school.⁹⁰ Although such a link disadvantaging women has not been demonstrated in other educational contexts, the Penn researchers are not alone in hypothesizing a nexus between participation and academic performance. This hypothesis also underlies the prevailing Socratic methodology that the Penn researchers criticize, as well a host of other teaching methods that aim to foster learning through active participation in the educational process.

88. Banks, *Early Study*, *supra* note 10, at 141–44 (32.1% of women and 44.3% of men volunteered at least weekly at five surveyed law schools); Banks, *Expanded Study*, *supra* note 10, at 528 (similar pattern in 14-school survey); Homer & Schwartz, *supra* note 10, at 29, 37–38, 50 (women participated less often than men); Krauskopf, *supra* note 10, at 325–26 (men interacted and participated more than women by as many as 15 percentage points at nine surveyed Ohio law schools); Taber et al., *supra* note 10, at 1239 (“male [law] graduates reported significantly higher levels of class participation than did female [law] graduates”); Weiss & Melling, *supra* note 10, at 1333 n.101 (at Yale Law School, men participated in class an average of 1.63 times more often than women).

89. Granfield, *supra* note 10, at 9 tbl.4 (only 58.0% of women surveyed at Harvard Law School reported a gain in competence during law school, as compared to 72.0% of men; 22.0% of women and 10.0% of men reported a decline); Homer & Schwartz, *supra* note 10, at 52 tbl.8A (51.0% of women and 29.0% of men “felt intelligent prior to law school but not now”); Krauskopf, *supra* note 10, at 328 (41.0% of women and 16.5% of men agreed with the statement “before law school I thought of myself as intelligent and articulate, but often I don’t feel that way about myself now”); Weiss & Melling, *supra* note 10, at 1332–55 (detailed account of alienation experienced by 20 women at Yale Law School).

90. Guinier et al., *supra* note 1, at 5. The Penn researchers were careful to note that not every woman law student feels alienated or fails to succeed academically. Guinier et al., *supra* note 1, at 59–60. They also noted that they found lower self-esteem and higher levels of alienation even among women who do well academically. Guinier et al., *supra* note 1, at 59.

The hypothesis has deeply troubling implications: if Professor Guinier and her colleagues are correct that women's behavior and feelings at Penn were important determinants of their lesser academic achievements, women should also be academically disadvantaged at other law schools where they participate in the classroom less often and experience lower self-esteem than their male peers. As researchers have found lower classroom participation among women at over twenty law schools,⁹¹ and most have additionally reported lesser satisfaction with the law school experience,⁹² the Penn hypothesis would require us to predict that women at *all* of these surveyed schools (and likely most other American law schools) will graduate with less impressive academic credentials.

The Penn researchers do not, to be sure, extend their hypothesis this far and even suggest that "Ivy League traditions" may distinguish the experience of women at Penn from that of women at less elite institutions.⁹³ But given the uniformity of reports on gender-based performance and self-esteem differences at law schools of all types, it seems most unlikely that a causal link between academic experience and academic performance would be confined to the Ivy League.⁹⁴

The existence of a link between academic performance and classroom experience is not, however, self-evident. Girls outperform boys academically from elementary school through college despite lower levels of classroom participation and reported self-esteem.⁹⁵ We do not even know whether the differences in men's and women's performance satisfaction reflect reality or merely different reporting tendencies.⁹⁶

Our data from Brooklyn Law School do not provide strong support for the hypothesized link between experience and academic performance, but neither do they disprove it. Women at Brooklyn were *not*

91. See *supra* note 88.

92. See *supra* note 89.

93. Guinier et al., *supra* note 1, at 60 n.150.

94. The Penn researchers also noted that the University of Pennsylvania Law School "does not operate in a vacuum; it functions in response to a set of widely shared values." Guinier et al., *supra* note 1, at 92.

95. See *supra* notes 11 and 12.

96. See *supra* note 73; Kimberly Daubman et al., *Gender and the Self-Presentation of Academic Achievement*, 27 *SEX ROLES* 187, 194-97 (1992) (among group of male and female college students with equivalent grades, women publicly (but not privately) predicted that they would obtain significantly lower grades than did men; women also predicted significantly lower grades for themselves when they believed that questioner's GPA was low, while men did not).

disadvantaged in terms of grades or academic honors even though they reported significantly less voluntary classroom participation and significantly greater dissatisfaction with their level of participation than did Brooklyn men. But, at least in their first year, Brooklyn women were far more likely to experience satisfaction with their classroom performance than were women at Penn.⁹⁷ Moreover, Brooklyn women reported contact with faculty members at a rate slightly, although insignificantly, higher than that of men.⁹⁸ It is thus possible that Brooklyn women's greater participation in the law school's informal mentoring system compensated, at least partially, for their lesser classroom participation and satisfaction. It also is possible that gender-based disparities in performance and attitude do affect academic performance, but only when those disparities are extreme. Our data strongly support the need for further research on these issues, but do not provide definitive answers.

B. The Impact of Educational Environment

The Brooklyn data generally support the utility of the educational reforms urged by the Penn researchers as a means of raising women's participation rates and self-esteem. Brooklyn's first-year women reported volunteering to participate in class discussion (although not to ask questions) at a rate that varied insignificantly from that of men.⁹⁹ Brooklyn women may participate in the classroom and in mentoring experiences more frequently than their peers at Penn.¹⁰⁰ At least during

97. Among first-year students, 54.0% of Brooklyn women, as compared to 28.0% of Penn women, reported satisfaction with their level of classroom participation. Rates for third-year students, however, were comparable, with 63.3% of Brooklyn and 64.0% of Penn women reporting satisfaction. See Guinier et al., *supra* note 1, at 36.

98. See *supra* note 36.

99. See *supra* notes 42 and 43.

100. The Penn researchers do not present data on the frequency of interactions with professors, and present ambiguous data on classroom participation. Their table on classroom participation does not provide complete frequency data, and the categories shown in the table do not match those discussed in the text. While the text indicates that women law students are significantly more likely than men to report that they "never" or "only occasionally" ask questions and volunteer answers, the table shows the proportions of men and women who "never ask questions" and "never volunteer." If the table includes the "only occasionally" group in the "never" category, the reported participation percentages are very close to those of Brooklyn women. If the table excludes the "only occasionally" group from the "never" category, Brooklyn women participate in class at a considerably higher rate.

their first year, Brooklyn women also appear much less likely to perceive the educational experience as gender-biased and far more satisfied with their classroom performance. For example, Brooklyn's first-year women were more than twice as likely as those at Penn to report that a student's sex had no impact on classroom interaction,¹⁰¹ and almost twice as likely to indicate satisfaction with their level of classroom participation.¹⁰²

These differences may stem in part from different survey methodologies. We surveyed students during class in selected courses and thus can be certain that our results represent an accurate cross-section of student opinion. The Penn researchers relied on voluntary responses, an approach that could easily lead to overestimation of student dissatisfaction. But the size of the Penn sample and the magnitude of the disparity between the Brooklyn and Penn results also suggest real differences in the experience of women at these two schools during their first year.

The attitudes of women at Brooklyn and Penn did converge, to a substantial extent, by the end of law school. Third-year women at Brooklyn reported satisfaction with their classroom performance at a rate no higher than that of third-year women at Penn;¹⁰³ they were somewhat more likely than third-year women at Penn to report that a

Compare Guinier et al., *supra* note 1, at 33 n.86 tbl.VIII and accompanying text with *supra* notes 40–43.

101. Among first-year women at Penn, 89.9% reported that a student's sex has some effect on class experience, as compared to 61.5% of those at Brooklyn. *See* Guinier et al., *supra* note 1, at 37 n.99. This comparison assumes that the reported Penn rate is based on responses to question 14 in the Bartow Survey, which we replicated at Brooklyn. A comparison of the Brooklyn and Penn data also suggests that Brooklyn women were less likely to perceive that men were called on more frequently, given more class time, or asked more difficult questions. But comparisons are again difficult given the cursory presentation of data in the Penn report. Assuming that the "no opinion" category has not been excluded in calculating proportions, 41.2% of first-year women at Penn and 7.8% of those at Brooklyn believed that men were called on more frequently than women; 34.9% of first-year women at Penn and 10.6% of those at Brooklyn believed that men were given more class time than women; 39.7% of first-year women at Penn and 9.6% of those at Brooklyn believed that men received more follow-up questions than did women.

102. *See supra* note 97.

103. At Brooklyn, 63.3% of third-year women and 64.0% of those at Penn reported satisfaction with their level of voluntary participation in class. *Compare* Guinier et al., *supra* note 1, at 36 with *supra* note 65.

student's sex has an impact on classroom interaction.¹⁰⁴ Moreover, the comparatively benign educational experience reported by the Brooklyn women did not produce an overall classroom participation or performance satisfaction rate equal to that of the Brooklyn men, even in the first year.

Our data thus support the efficacy of the reforms urged by the Penn researchers, but cast doubt on their sufficiency. The relatively large number of women faculty at Brooklyn Law School and a first-year curriculum featuring smaller classes and greater diversity of teaching styles were correlated, as compared to the more traditional environment at Penn, with greater involvement by women in the educational process and much less perceived gender bias. But these improvements were not sustained over the three years of law school and did not produce gender-neutral results even within the first year.

The failure of Brooklyn's comparatively benign environment to eradicate gender-based disparities is not surprising. Students entering law school are not blank, neuter slates. They are men and women with decades of gendered socialization and experience. Their hopes, fears, and habits within the law school must of necessity reflect those they have brought to it.

One experience that most students will bring to law school is male domination in the classroom. Male classroom domination has been documented as early as elementary school¹⁰⁵ and continuing into college;¹⁰⁶ few students will have escaped it, and the habits of many will

104. Of third-year women, 81.2% of those at Brooklyn and 72.0% of those at Penn reported that the nature and content of classroom interactions are sometimes affected by the sex of the student. See Guinier et al., *supra* note 1, at 37-38 n.99. This comparison assumes that the "no opinion" category has not been excluded from the Penn results. See *supra* note 101.

105. SADKER & SADKER, *supra* note 12, at 1, 42-50, 269 (reporting results of classroom observations in four eastern states and the District of Columbia showing that boys receive more teacher attention than girls); Bailey, *supra* note 12, at 322-24 (reviewing current research on gender differences in classroom interaction patterns); Daly et al., *supra* note 12, at 29, 35 (reporting significant association between male gender and question-asking comfort in national sample of eighth graders).

106. See, e.g., Bailey, *supra* note 12, at 322-24 (reviewing research); Sternglanz & Lyberger-Ficek, *supra* note 12, at 345 (male college students engaged in significantly more student-teacher interactions than women when teacher was male); see also Canada & Pringle, *supra* note 12, at 161 (during first five years following transition from women's to coeducational college, increasing presence of male students was associated with a decrease in professor-initiated interactions, female-student-initiated interactions, and female-student-initiated follow-up interactions, and with an overall increase in male-student-initiated follow-up interactions).

reflect that experience.¹⁰⁷ Researchers have also found, in varied settings, that women tend to offer lower estimates of their abilities and to experience greater self-doubt than do men.¹⁰⁸ Given the heavy weight of gendered experience brought to the learning environment by each law student and teacher, it would be altogether remarkable if any law school could insulate its classrooms from gender's effects.

With such powerful influences arrayed against the creation of a completely benign and gender-neutral educational environment, we interpret the Brooklyn data optimistically. They show that women can, and do, succeed in law school despite their greater tendency toward self-doubt and classroom passivity. The Brooklyn data also show that a higher percentage of women faculty and a first-year curriculum offering smaller classes and less emphasis on Socratic methodology are associated, when compared to a more traditional law school setting like that at Penn, with significant gains in women's participation and performance satisfaction.

C. Issues for Further Research

There are many questions that our data do not answer. One issue that we hope to further investigate is the failure of Brooklyn's women to sustain the level of class participation and performance satisfaction that they achieved during their first year. Our data suggest that Brooklyn's reforms have had beneficial effects, but that they do not carry over

107. It is unclear whether classroom domination confers any academic benefit. Some of the disproportionate attention boys receive appears to reflect their greater tendency to be disorderly; in these cases, boys receive attention in the form of reprimands. See SADKER & SADKER, *supra* note 12, at 197-203; SOMMERS, *supra* note 73, at 165-66.

108. See, e.g., AMERICAN ASS'N OF UNIVERSITY WOMEN, *SHORTCHANGING GIRLS, SHORTCHANGING AMERICA: A CALL TO ACTION* (1991) (survey of 9 to 15-year-old-boys and girls showed that girls experienced a dramatic drop in self-esteem; high school girls were significantly less likely to report self-confidence and self-esteem than boys); Berg & Ferber, *supra* note 13, at 635, 644 (women graduate students in the physical and biological sciences were significantly less likely than men to express academic self-confidence); Winston J. Hagborg, *The Rosenberg Self-Esteem Scale and Harter Self-Perception Profile for Adolescents—A Concurrent Validity Study*, 30 *PSYCHOL. IN THE SCHOOLS* 132, 135 (1993) (adolescent girls had significantly lower scores on standardized test of self-esteem); L.A. Jackson et al., *Gender and Self-Concept—A Reexamination of Stereotypic Differences and the Role of Gender Attitudes*, 30 *SEX ROLES* 615 (1994) (findings indicated gender differences that favored males in overall self-evaluation of surveyed high school students).

to the second and third years of law school. We need to understand this phenomenon better and determine what institutional measures can combat it.¹⁰⁹

Another unresolved issue is why women at Penn fail to live up to their academic potential. While our data do not strongly support the hypothesis of a causal link between academic success and either classroom participation or self-esteem, they also fail to suggest an obvious alternate hypothesis. Brooklyn women succeeded academically during the 1970s without any of the recent reforms.¹¹⁰ Moreover, Columbia Law School—an institution whose curriculum, faculty, and student body that closely resemble those of Penn—recently reported that during the early 1990s its women students performed as predicted by their proportionate representation.¹¹¹ If these women could succeed academically in a traditional law school learning environment, what explains the results at Penn?

One possibility is that the experience of women at Penn is simply anomalous. (This would not explain the Penn experience, but would make it much less important elsewhere.) While we lack the comparative data to confidently place the Penn experience in context, preliminary LSAC data showing gender disparity in first-year grades at a large number of law schools suggest otherwise.¹¹² Nor is Penn alone in having a disproportionately small number of women on law review.¹¹³

109. One possibility is that the large number of women faculty teaching in the first year, *see supra* note 15, adversely curtails opportunities to take courses with women faculty in the second and third years. *See* Guinier et al., *supra* note 1, at 78 n.1 (women college students at Harvard College “spoke almost three times longer” in classes with women teachers as in classes with male teachers) (citing Catherine G. Krupnick, *Women and Men in the Classroom: Inequality and Its Remedies*, ON TEACHING & LEARNING: J. HARV.-DANFORTH CENTER, May 1985, at 18–19).

110. *See supra* section I.B.5.

111. Chiu-Huey Hsia, *Men, Women Perform Equally Well, Study Says*, COLUMBIA SPECTATOR, Mar. 20, 1995, at 1, 5; *see also* Shanie Latham, *Iowa Study Defies Trend*, NAT'L JURIST, Oct./Nov. 1995, at 28 (reporting that University of Iowa Law School study found that women performed as well as men).

112. *See* Russakoff, *supra* note 11, at A3.

113. For a twenty-school list of women's law review membership, *see* Hirshman, *supra* note 14, at 122 (at 13 of 20 surveyed schools women were not proportionately represented on law review). *See also* Guinier et al., *supra* note 1, at 60 n.151 (citing analysis by Professor Lewis A. Kornhauser at New York University Law School showing that women were not proportionately represented in N.Y.U.'s Order of the Coif selections during 1980–93).

Another possibility is that the Penn researchers, while wrong about the specific causal link between academic success and classroom participation/self-esteem, are nonetheless right about the influence of gender on the first-year experience. We were struck, reading the Penn report, by the level and intensity of reported negative experience related to gender in the first year. A comparison of the Brooklyn and Penn responses to the open-ended question concerning gender discomfort and the aggregate survey data suggests that, while Brooklyn students perceive an occasional gender-influenced incident, Penn students see a full-scale gender war. We noted a qualitative difference in the responses of men as well as women. For example, approximately one-third of male Penn respondents who answered the open-ended question indicated in one or another fashion that the women at Penn were "paranoid,"¹¹⁴ while not one of the male respondents at Brooklyn belittled their female colleagues in this manner. Nor do the numerous descriptions of sexually charged hostility to regular classroom participants at Penn find any parallel in the Brooklyn student responses.¹¹⁵

These differences suggest the need for further research on the specifics of the law school learning environment, particularly during the first year. Women may fare just as well with large classes and the Socratic method, but still suffer from overt gender-based hostility. Alternatively, women may be disproportionately affected—or affected in different ways—by one or another aspect of the first-year learning experience. Law school observers agree that the first year is a highly stressful, alienating, and isolating experience for most students of both sexes.¹¹⁶ Yet the observers have variously blamed the

114. Guinier et al., *supra* note 1, at 56 tbl.XV.

115. Perhaps the best example is the game of "asshole bingo" described by the Penn researchers, where students who talk in class are "assholes" on the classroom "bingo board," with women "assholes" typically classed as "man-hating lesbians" and men "assholes" as "nerds." Guinier et al., *supra* note 1, at 51 n.128.

116. See, e.g., G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RES. J. 225; Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9 (1990); Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887 (1977); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991); Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511 (1983); Michael J. Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10 (1968); Cathaleen A. Roach, *A River Runs Through It: Tapping Into the Informational Stream to Move*

workload,¹¹⁷ Socratic method,¹¹⁸ lack of feedback,¹¹⁹ or general environment,¹²⁰ without demonstrating how or which of these experiences produce distress, which students are particularly vulnerable, whether gender plays a role in determining vulnerability, or how distress affects academic performance. Longitudinal research that individually tracks students' attitudes and performance during law school could resolve some of these issues. At this point the data are simply too sparse to tell which aspects of the law school experience negatively affect women's academic performance.

CONCLUSION

The Brooklyn data add an important new dimension to the Penn research. They provide some support for the reinvention of legal education recommended by the Penn researchers. In such a reinvented institution women fully participated in the informal learning environment and, during their first year, were twice as likely to indicate satisfaction with their classroom performance as compared to women at Penn. But the data also suggest that the reinvented law school may not be enough to increase either women's classroom participation or performance satisfaction to the levels reported by men. Our findings also suggest that a broader range of factors must be explored before we can fully explain the impact of gender on the law school experience. The addition of the Brooklyn data to that generated by the Penn research will, we hope, lay the groundwork for a new research agenda on the relationships between gender, the law school learning environment, and academic success. ✻

Students from Isolation to Autonomy, 36 ARIZ. L. REV. 667 (1994); Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); James B. Taylor, *Law School Stress and the "Deformation Professionnelle"*, 27 J. LEGAL EDUC. 251 (1975); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93 (1968).

117. See, e.g., Benjamin et al., *supra* note 116, at 243; Patton, *supra* note 116, at 14-21.

118. See, e.g., Stone, *supra* note 116, at 405-18; Taylor, *supra* note 116, at 254; Watson, *supra* note 116, at 119-32.

119. See, e.g., Glesner, *supra* note 116, at 646, 657-58; Patton, *supra* note 116, at 48.

120. See, e.g., Carney, *supra* note 116; Roach, *supra* note 116.

APPENDIX A

BROOKLYN LAW SCHOOL
 WOMEN'S REPRESENTATION ON JOURNALS & MOOT COURT HONOR SOCIETY, 1985-94
 WOMEN'S PERCENTAGE IN CATEGORY

Year of Graduation	Graduating Class	Law Review	Law Review Executive Board	Int'l Journal	Int'l Journal Executive Board	Moot Court Honor Society	Moot Court Honor Society Executive Board
1994	41%	52%	25%	68%	43%	55%	60%
1993	42%	33%	60%	46%	50%	43%	83%
1992	46%	64%	67%	29%	20%	52%	50%
1991	47%	42%	40%	52%	50%	42%	33%
1990	49%	33%	50%	65%	100%	45%	44%
1989	42%	39%	50%	45%	71%	72%	33%
1988	47%	55%	50%	48%	40%	55%	25%
1987	44%	63%	50%	47%	60%	44%	0%
1986	41%	46%	50%	42%	60%	52%	33%
1985	44%	47%	33%	61%	40%	45%	40%
AVG	44%	47%	48%	50%	53%	51%	40%

APPENDIX B

BROOKLYN SURVEY

This questionnaire is based on one distributed at another law school. From the results obtained here, we hope to learn more about the attitudes and experiences of Brooklyn Law School students as compared to their peers at other law schools. Please respond based on your experience as a Brooklyn Law School student.

Part A.

1. How often do you ask questions in class?
 - a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

2. How often do you volunteer in class?
 - a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

3. Are you comfortable with your level of voluntary participation in class?
 - a) yes
 - b) no

4. Do you think that students of one sex ask more questions than students of the other sex?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

5. Do you think that students of one sex volunteer more answers than students of the other sex?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

6. Are students more tolerant of in-class comments made by students of one sex than of in-class comments made by students of the other sex?
 - a) yes
 - b) no

7. Do you think that students of one sex who have asked questions or volunteered answers are given more class time than students of the other sex who have asked questions or volunteered answers?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

8. How many times are you called on in class involuntarily (e.g. without raising your hand)?
 - a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

9. Are you comfortable with the number of times you are called on involuntarily (e.g. without raising your hand) in class?
 - a) yes
 - b) no

10. Do you think that students of one sex are called on more frequently than students of the other sex?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

11. Do you think students of one sex who have been called on are given more class time than students of the other sex who have been called on?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

12. Do you think students of one sex are asked questions that are more difficult than those posed to students of the other sex?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

13. Do you think that students of one sex receive "follow up" questions more often than students of the other sex?
 - a) men more often
 - b) equally
 - c) women more often
 - d) no opinion

14. Do you think that the nature or content of classroom interactions between professors and students are affected by the sex of the students?
 - a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

15. Do you think that the nature or content of classroom interactions between professors and students are affected by the sex of the professor?
 - a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

16. How often do you approach your professors after class or in their offices?
- a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day
17. Have you ever felt, in any context, that a professor treated you inappropriately based on your gender?
- a) yes
 - b) no
18. Given your day-to-day observations at Brooklyn Law School do you think that:
- a) female professors favor female students.
 - b) female professors favor male students.
 - c) female professors treat male and female students equally.
 - d) no opinion.
19. Given your day-to-day observations at Brooklyn Law School do you think that:
- a) male professors favor male students.
 - b) male professors favor female students.
 - c) male professors treat male and female students equally.
 - d) no opinion.
20. If you had to choose just one, what quality do you most admire in a law school professor? (leave blank if uncertain or none apply)
- a) knowledgeable about subject-matter
 - b) challenging
 - c) open to questions and available to help with difficulties
 - d) expressed ideas clearly
 - e) treats students with respect
21. How competitive are the students in this law school?
- a) always
 - b) sometimes
 - c) never
 - d) no opinion

22. Are the students of one sex more competitive than students of the other sex?
- a) men more competitive
 - b) equally
 - c) women more competitive
 - d) no opinion
23. What kind of job best describes your long-term legal career goals? (leave blank in uncertain or none apply)
- a) law firm/sole practitioner
 - b) business/corporate legal department
 - c) government/public interest
 - d) academic
 - e) job unrelated to law
24. During law school, how often do you cry?
- a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day
25. During law school, how often do you experience difficulty sleeping?
- a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day
26. During law school, how often do you experience depression or anxiety?
- a) never
 - b) only occasionally
 - c) at least once a month
 - d) at least once a week
 - e) at least once a day

27. Have you sought counseling or psychiatric care for law school related concerns?
- a) yes
 - b) no
28. Did you come to law school directly after college?
- a) yes
 - b) no
29. What is your sex?
- a) male
 - b) female
30. What is your ethnic background?
- a) Asian
 - b) Hispanic
 - c) African-American
 - d) European
 - e) Other
31. What year of law school are you in?
- a) 1
 - b) 2
 - c) 3
 - d) 4
32. Are you going to school
- a) part-time
 - b) full-time

Part B.

Please use this space to describe any acts or comments made by a professor or fellow student you have witnessed or experienced at the law school that made you uncomfortable for gender-based reasons. Please be as specific as you can, but do not feel obliged to identify anyone by name. As with the rest of the survey your response will be confidential.