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The Law Schools

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The Law Schools



I would like to begin by summarizing some of the reports that Ruth referred to earlier. I'm talking about what those reports said directed at the law schools for dealing with gender bias in the law schools. Then I would like to look more closely at three areas:

First, at women students:

What are their numbers in the law schools?

To what extent do they encounter gender bias in the classroom?

What special problems do they encounter in the law school placement process?

Second, at women faculty:

What are their numbers in the law schools?

What positions do they occupy?

How do they fare with their male colleagues and male students?

Third: Is there gender bias in the law school curriculum?

If so, is it a manifestation of a more general bias in the legal rules that govern our society?

Is traditional law school pedagogy inhospitable to women?

Let me turn to the recommendations of the various reports referred to directed at law schools.

The 1986 report by the New York Task Force on Women in the Courts had various recommendations directed at changes in the curriculum. For example, the Report called for accurate information in the law school curriculum on rape, supplementing family law courses to include greater discussion about the award and enforcement of child support, the psychological conditions surrounding divorce for

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children, the impact of spousal abuse on children and the way in which gender bias against both men and women influence custody decision. The report also asked that information and material be included in professional responsibility courses to make students aware of the subtle and overt manifestations of gender bias against women litigants and its due process consequences.

The New York State Department of Education polled law school deans as to what was being done in the law schools to implement the Task Force's report. Only ten of New York's fifteen law schools responded to this inquiry.

In analyzing these responses the New York State Education Department concluded the following:

"On the basis of their replies to the State Education Department inquiry, reactions of the Task Force Report range from no specific activity to formal action initiated under the leadership of the dean. Eight of the ten respondents report that their curricula comply with at least some of the Task Force recommendations. However, this represents only slightly more than half of New York's fifteen law schools. Moreover, comments from two of the responding institutions suggest that law schools may encounter difficulty implementing certain Task Force recommendations, and both coincidentally refer to the recommendation that law schools' curricula include information concerning child support enforcement."

The New York State Bar Association established a Special Committee on Women in the Courts to report on the Task Force's Report. Ruth Schapiro was chair of that special committee. I believe a copy of their report was distributed today.

That committee made two recommendations addressed to the law schools. They recommended that the Association contact law school deans, discuss the Task Force Report, discuss ways to modify programs or curricula and share successful experiences. I don't believe that recommendation has been fully

implemented. There have been informal discussions, but not a formal meeting with the deans. The Committee also recommended that the bar make known to law students the institutional commitment to combatting gender bias in the legal system.

Finally, the ABA Commission on Women in the Profession, established in August of 1987, issued its report in June of 1988. The Commission expressed serious concern about gender bias in law schools in the areas of faculty hiring, differential, belittling and harassing treatment in law schools—and this is a report that was just issued a little over six months ago—sexual harassment and bias in curricula and teaching. The Commission observed that law schools shape the next generation of lawyers and judges. It is important to begin there to discuss discriminatory attitudes and increase awareness about the ways in which the law and the profession affect women.

First, let me turn to women law students.

Judge Kaye gave you the statistics. In 1965 about four percent of the law school population were women. This increased to seven percent by 1969 and in 1987, the last time for which statistics were reported, in the fall of '87 approximately forty-one percent of the students in law school were women.

The most blatant problem that women students encounter continues to be sexual harassment. There continue to be incidents in many law schools. Professor Marina Angel of Temple Law School recently published an excellent article entitled "Women in Legal Education" that appears in *The Temple Law Review*.

In her article she says the following: "Too many male faculty members view the classroom as a 'happy hunting ground' and believe that the women have been admitted to law school for their personal

review and amusement."

Professor Angel relates an experience at a law school where she worked early in her career that graphically makes the point. She writes:

"There was no eating facility anywhere near the law school. So we were all forced to eat lunch together in the faculty lounge. Year after year early in the fall semester the conversation involved the new first-year class and the blond in the third row with the big tits. There seemed always to have been one in the third row of the first-year class every year that I was there. The first, second and perhaps third year I said nothing. By the fourth time when there was a lull in the description I piped up with, 'Do you know the airline pilot in the second row who drives a Ferrari?' They all agreed they did. I said, 'He looks like he's well hung.'

"Shocked silence greeted my statements together with looks that indicated I was insane.

However, the comments stopped, at least in my presence, with the exception of graduation. At graduation the faculty sat on the stage in full view of the students and their families. The conversation around me too often consisted of 'Where were we hiding that one for three years? She's very well-built.' This attitude demonstrated that women students were still being viewed as slabs of meat who were there for the gratification of male faculty members."

Some law schools—Temple, NYU and Iowa—have adopted policies prohibiting sexual harassment and gender bias. These policies often deal with consensual relationships as well, and such relationships are condemned when one of the persons involved has authority over the other who is a student. This may even extend to relationships, for example, between the editor-in-chief of the law review and a staff member of the law review.

The policies often deal very broadly with gender bias, a term defined in the NYU policy as conduct which denigrates others on the basis of gender or based on preconceived notions or stereotypes about differences between the sexes.

There are still problems of offensive humor and comments in

classrooms.

Professor Banks of Tulsa Law School reports on a study of gender bias in the classroom. Forty-seven percent of the people surveyed said that one or more professors used offensive humor in the classroom. One example that was repeatedly cited was the professor saying that you can't get a good maid or secretary because of all of the women in law school. This is a recent survey. This is not history many years ago.

Most employers seeking to avoid liability under the Civil Rights Act have adopted sexual harassment policies. This certainly seems like an appropriate thing for law schools to do as well, and not that many law schools have done this.

There are some problems that women have in adapting—adjusting to law school. The problems may be related to the motivation in going to law school.

In general, women seem to go to law school for more idealistic reasons than men, although a recent survey that was done of people taking the LSAT in California indicated that when they were asked why they wanted to go to law school, most respondents said it was because of the influence of "LA Law." And then they were asked what is it about "LA Law" that inspired them to go to law school. And the most prevalent answers were because lawyers make lots of money and because lawyers have lots of affairs.

But as someone said at lunch today, with all those billable hours, I'm not sure how you can have lots of affairs.

Another reason women may have problems in adjusting to law school may be related to the typical pedagogy in law school, the use of the Socratic method. It may be related to what is or what is not covered in the curriculum. It may be related to how material is presented in casebooks.

At a recent conference one woman law professor said that very

often her female students claim they are very confused about some point in the casebook. And when she questions them about it, she finds that they fully understand every aspect of the principles of law but what they really are confused about is how any court could possibly have reached the conclusion that the courts in the particular cases involved reached. They weren't confused about the law, but just about the results that were reached.

One result of women's possible alienation from what is going on in law school is also reported by Professor Banks. She found that more females than men reported that they seldom or never voluntarily participate in class. She concluded that women are silent because the law school classroom environment, structure and language tend to exclude women or make them feel inferior. I'll return in a little while to a discussion about curriculum and pedagogy.

Let me talk for a moment about placement. There still are problems with the placement process. There are still employers who ask interviewees whether they expect to have children, whether they will move if their husband's job is changed. Recently at our school a person interviewing for a public employer of some significance, asked those very questions and I had to send the head of the agency a copy of the guidelines of the Equal Employment Commission about the propriety of the questions that were being asked.

There are problems related to child care or other family responsibilities. At our school, we often have school on days when there are legal holidays and businesses are closed. And generally on those days you'll find that many of the women students bring their children to school. There are some small number of law schools, particularly schools at larger universities, that do have day care programs.

I think the law school part-time programs, which often are looked

upon with disfavor, make it possible for many women to go to law school. At my law school we have a part-time program in the evening which has permitted many women to go to law school who otherwise would not have been able to attend, and we even have a part-time day program which is adjusted in such a way that people attend, I believe, three days a week and classes finish no later than three o'clock in the afternoon.

Let me now turn to faculty:

In 1960 three-and-a-half percent of the legal profession were women but only .5 percent of the tenured track faculty were women. In 1986 twenty percent of the legal profession were women and 20.4 percent of the full-time faculty were women.

Before you become too sanguine about these figures, however, you should realize that the 20.4 percent includes professional skills teachers who almost always are on a separate tenure track. Professional skills teachers usually are the clinicians and legal writing teachers in law schools. Women are forty percent of the clinicians and seventy-five percent of the legal writing teachers. Thus a good percentage of women are in what many regard as a second class track.

The principal problems that women faculty find in law schools are sexual harassment or disparagement. I mentioned the comments by Professor Marina Angel a little while ago. Women faculty members, particularly in their early stages of teaching, have reported lack of respect from male students.

I remember one incident at my school where we had an adjunct who was teaching a course. The adjunct was a woman who was very distinguished in her field and also a black woman. Her name was announced as the teacher, but I think we might have just used her first initial. I brought her to the classroom to introduce her to the class the first day, and I noticed that a lot of students looked concerned or

disturbed when they saw who their teacher was going to be. Fortunately, very few of them dropped out and the reviews submitted at the end of the course were all very good. So the initial reaction was unjustified.

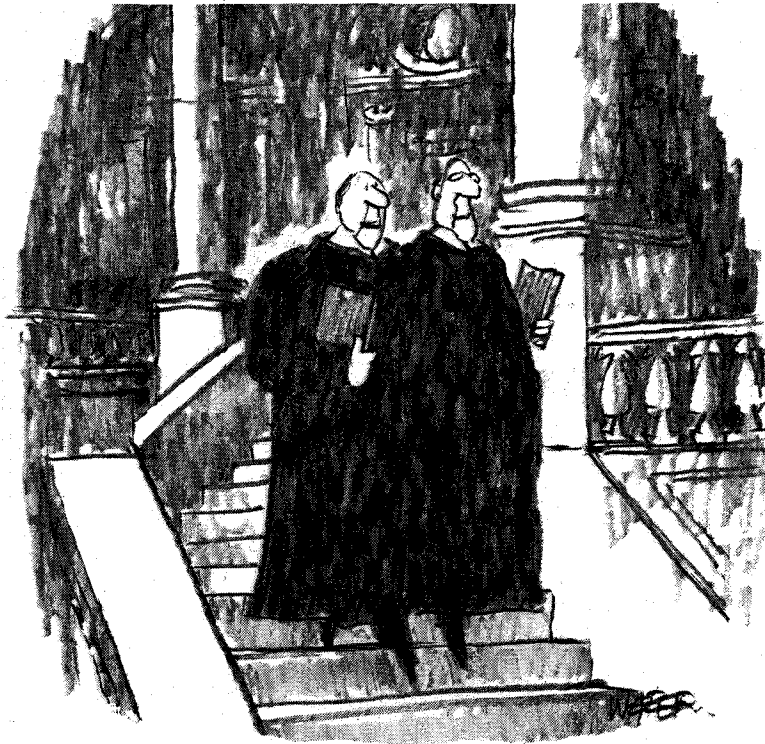
Sometimes law faculties that have few women faculty members, particularly if they are black women faculty members, find those faculty members are exceedingly overworked. As token women or token blacks they find themselves being asked to serve on every committee. They find themselves being asked to participate in outside activities when the law school is called upon to have someone participate in some outside program. Women find themselves being called upon very heavily to advise women students.

And all of this takes a great deal of time. What sometimes happens is that then when their male colleagues have to evaluate them for promotion or tenure, the activities that women and black women have participated in because they are women or blacks tend to be discounted and not given the credit it should receive.

There are problems in hiring and tenure. As I mentioned, there is a tendency for women to be clustered in legal writing and in the clinical fields. Often men have had more experience working with firms or with the government. Women have sometimes chosen writing and clinical positions since they are better able to accommodate parental roles and the demands of scholarship in some of those positions are not as great as they are in a full-time tenure track position.

There has been some progress in retaining and tenuring women, but a recent comprehensive study done by Professor Richard Chused of Georgetown revealed some very serious problems. Professor Chused's article is either out in the University of Pennsylvania's Law Review or about to come out.

He found there was a relationship between women achieving



"I once had a case where the prosecution and the defense each filed their briefs on Crane's. I found in favor of them both."

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tenure and the number of tenured women already on the faculty. The more tenured women there were on the faculty, the more likely it was that a woman would receive tenure and that she would remain on in the school. The fewer tenured woman there were, the more likely it was that women would not remain on.

Professor Chused concluded that though the national trends in hiring men and women are similar, some schools clearly have moved rapidly to integrate women into all levels of their faculty while others are creating roadblocks to both the hiring and promotion of women. Professor Chused's study also showed that the top fifteen percent "high prestige" schools were disproportionately represented amongst schools that showed the least progress in hiring and retaining women.

A word about women deans:

In 1974, 3.18 percent of law school deans were women. That number has now moved up to 5.16

percent. Of the fifteen law schools in New York State two of them have women deans, Columbia University and Pace Law School, although Dean Johnson at Pace is going to be leaving at the end of this academic year.

Let me say something about the tenure review process.

Professor Angel identifies four aspects of the process that puts women at a disadvantage.

One standard that law school faculties often talk about in deciding on people to tenure is whether the person meets the collegiality standard. I'm not sure there are any set of rules in any law school that actually talk about collegiality, but law school professors often discuss that when evaluating somebody for tenure.

And there you have men deciding how well the women fit in, how well are they liked, and it's a situation where men are mostly reviewing women. I remember one

tenure promotion committee that I was on and we were reviewing a woman faculty member. One faculty member raised the question that she didn't wear a brassiere and wasn't that very distracting for the male students and how can we have somebody on the faculty of that sort. And I asked him to show me where the tenure rules require that you wear a brassiere. But no one was able to point that out to me.

On teaching, sometimes there are student evaluations that are negative. Many male students expect their professors to be like Professor Kingsfield and not many women professors are like that. Women's style of teaching tends not to be as hierarchical or aggressive or assertive as men's and sometimes this results in not as good student evaluations.

In research and writing sometimes faculties will discount the writings of women if they're on subjects relating to issues that women are interested in. They will be considered insubstantial and unworthy. In my school a black faculty member asked me whether if she published an article on a civil rights issue in the law review of a school with a predominantly black student body would that be given the same weight as if she published something on environmental law, which is her field, in another law review. I assured her that it would be given the same weight.

Sometimes if women write in traditional areas in which women have specialized in law schools, such as family and juvenile law, those are considered soft areas.

Finally, the question of service to the bar, to the school, to the community, is also evaluated in granting tenure. Often the sort of service that women engage in, being on an advisory committee dealing with women's issues, taking part in national or local women's organizations, are discounted by male tenured faculty members. They are not given the same weight as some

other activities.

There are also problems that women encounter when they become parents. As I mentioned before, some schools do have day care facilities. Many schools do permit leaves of absence. Many schools permit reduced teaching loads. Occasionally when a schedule is adjusted, there might be some resentment from male faculty members. But I think adjusting schedules in law schools is a little bit easier than in a law firm since, as you know, most law professors are only expected to work about six or seven hours a week and it's fairly easy to adjust those six or seven hours a week to accommodate people.

I would like to comment on something that Judge Kaye alluded to and that is the discussion of curriculum and pedagogy that is going on at the present time. This has been an area of significant recent ferment. The new phase of exploring gender bias in the law school deals with curricula, pedagogy and the operation of the legal system. Judge Kaye mentioned a recent issue of the *Journal of Legal Education* that was devoted to women and legal education, pedagogy, law, theory and practice.

There was a major panel at the recent meeting of the Association of American Law Schools' just last week on the influence of feminist theory and gender bias in contract law. The session was sponsored at the AALS meeting by the Section on Women and Legal Education and the Society of American Law Teachers because the AALS Section on Contracts would not sponsor the meeting. The Chair of the AALS Section on Contracts, in declining to sponsor the panel, wrote that it was his suspicion that the male bias of our society has not had important consequences for contract law. I attended that session and it certainly seemed as though he was wrong.

Also at the AALS meeting the Women and the Law Project of the Washington College of Law

presented a program to examine the attempts to integrate the personal experience of women law teachers and their students into the classroom. The contention was that personal experiences often are excluded from classroom dialogue.

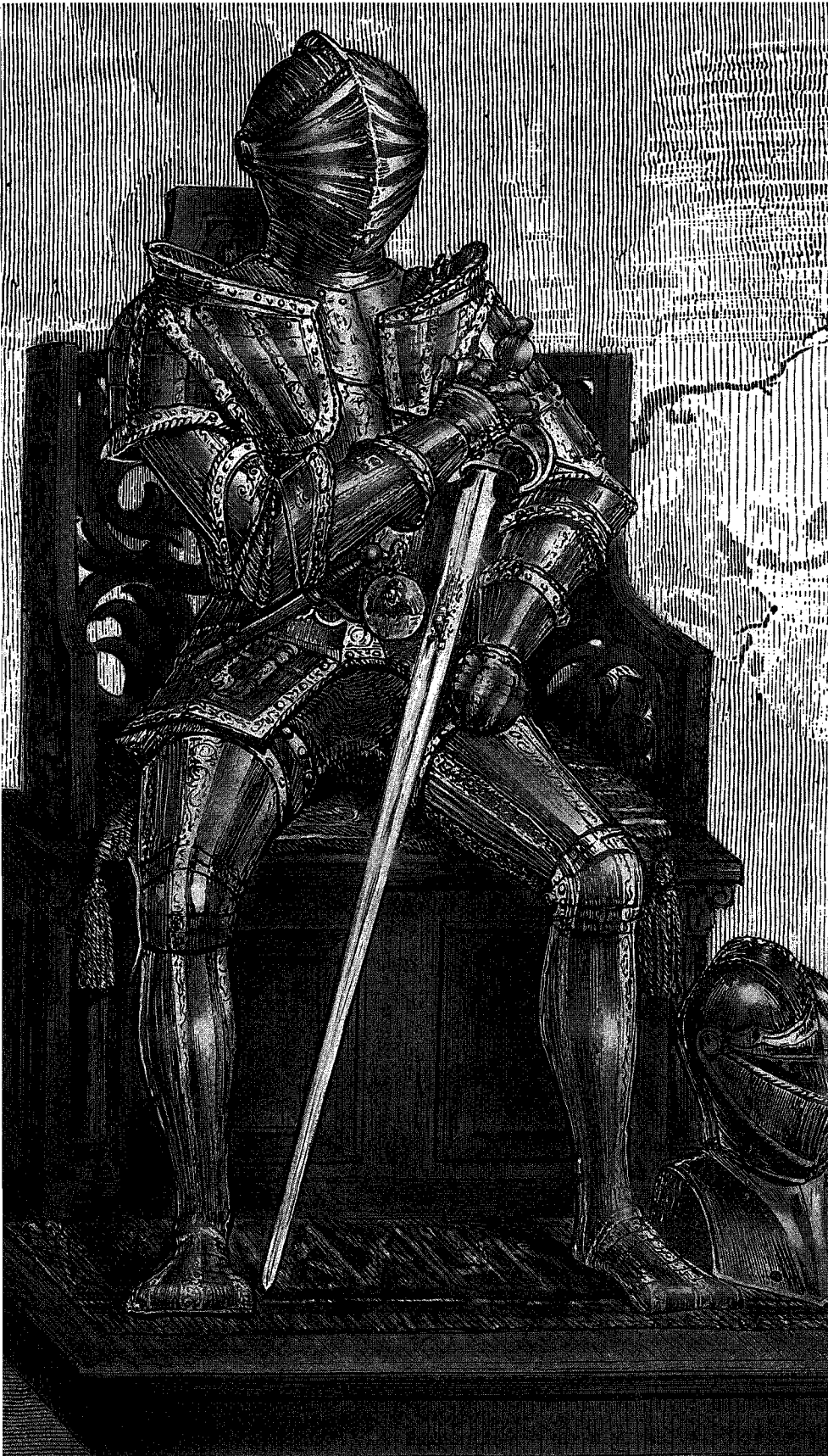
This topic of pedagogy and curriculum could justify an entire panel, and I really don't have the time to fully explore that now. But there is a whole new set of issues that is being considered. A set of issues with which I am most familiar, and perhaps most of you are, too, are the first-generation issues, issues such as whether there are courses in law school on sex discrimination, whether all the courses deal with issues that are of concern to women. Now, the next generation issues move us to what is now called feminist jurisprudence, something much more controversial and which could have a much more revolutionary impact on the study of law, on the attitude of lawyers and on the way in which individuals approach the legal system. I had planned to make further comments on that but I don't want to take more time than I have been allotted.

Let me conclude by being a little bit optimistic. While I have illustrated problems, I think that these problems also present great challenges. Cynthia Fuchs Epstein, who is a professor at The City University of New York and a sociologist who has spent a lot of time studying the sociological aspects of the legal profession, recently wrote: "In some ways this is the best of times in the legal profession. The new recruits, among them women, whether they know it or not, work in a profession that is more open than at any time in history."

I think that is a very exciting challenge and I happen to think that the law schools have a responsibility to ensure that these new challenging possibilities are explored thoroughly.



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