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## The Logician Versus the Linguist- an Empirical Tale of Functional Discrimination in the Legal Academy

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THE LOGICIAN VERSUS THE LINGUIST—  
AN EMPIRICAL TALE OF FUNCTIONAL  
DISCRIMINATION IN THE LEGAL ACADEMY

*Andrea Kayne Kaufman\**

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It is a truth universally acknowledged<sup>1</sup> that male law students tend to outperform female law students. Studies have indicated that men receive better grades than women at many law schools,<sup>2</sup> and that men

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1. With apologies, the phrase “It is a truth universally acknowledged” is borrowed from one of England’s greatest female writers. JANE AUSTEN, *PRIDE AND PREJUDICE* 1 (Random House 1995) (1813).

2. See LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997). In their seminal study of University of Pennsylvania

have reported more satisfaction and comfort with law school than women.<sup>3</sup>

Conservatives<sup>4</sup> and feminists and everyone in between have proposed different explanations for the disturbing phenomenon of men feeling more comfortable in law school. Many blame the patriarchal nature of legal education that may isolate,<sup>5</sup> mute,<sup>6</sup> and subordinate women from the academy.<sup>7</sup> Others suggest that women and men have different learning preferences<sup>8</sup> and that the male learning preferences are more

Law School students, the authors describe that although “men and women enter with virtually equivalent statistics, men receive, on average, significantly better grades by the end of year one.” The authors note that men “maintain this advantage through graduation; that is, the gender difference for mean GPA is stable across the three years in the law school.” The authors found that “women receive relatively lower grades, achieve lower class ranks, and earn fewer honors than do men.” GUINIER ET AL., *supra*, at 37–38. See also Allison L. Bowers, *Women at The University of Texas School of Law: A Call for Action*, 9 TEX. J. WOMEN & L. 117, 139 (2000) (finding a similar statistical differential in a study of law students at the University of Texas). See also Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 287–88 (1998) (describing the Boalt Hall study in which “two-thirds of all women thought that their grades did not fairly evaluate their abilities or the time they spent studying . . . Not surprisingly . . . a majority of men expressed satisfaction with their academic performance”). See also Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN’S L.J. 1, 9–10 (1989) (citing the Yale Study which found that the content of legal education “devalues factors important to women, such as social context, plurality of interests, or circumstantial and/or economic justification for people’s actions”).

3. Torrey et al., *supra* note 2, at 287–88.

4. See generally Richard A. Posner, *Conservative Feminism*, in FEMINIST LEGAL THEORY FOUNDATIONS 99–117 (1993) (Posner describes how various scholars have explained the phenomenon of men feeling more comfortable than women in the formalistic style of law).

5. See Cathleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students from Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 676 (1994) (stating that isolation affects students who might naturally be thought to drift outside the realm of the traditional majority law student). See also Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 462–65 (1996) (discussing how nontraditional law students, which includes females, are more likely than traditional students to be isolated from formal and informal networks that can help nontraditional law students understand and ultimately master the law school environment).

6. See Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 16–20 (1998) (discussing the consequences that result from the muting of outsider voices).

7. See Stanchi, *supra* note 6, at 17.

8. See generally Jayne Elizabeth Zanglein & Katherine Austin Stalcup, *Te(a)chnology: Web-Based Instruction in Legal Skills Courses*, 49 J. LEGAL EDUC. 480, 482–91 (1999). The authors explore various learning style theories including: The Learning Style In-

easily adapted to the Socratic case method,<sup>9</sup> the standard bluebook exam,<sup>10</sup> and the hierarchical competitive nature of law school.<sup>11</sup> Underlying many of these criticisms is the explicit and implicit assumption that female law students struggle with law school's preoccupation with normative notions of logic and reason.<sup>12</sup>

This paper, focusing exclusively on gender, asks whether male and female law students express different preferences for logic-based learning models. A wide variety of educational theories and other theories have been used to conceptualize different learning preferences among law students<sup>13</sup> but until now, none has focused on logical intelligence compared with the other intelligences. Using Harvard educational psychologist Howard Gardner's theory of Multiple Intelligences, this paper describes an empirical study establishing that male and female law students express differences in preferring logical intelligence over the other intelligences. This paper introduces the concept of "functional discrimination," addressing the ways in which law school functionally discriminates against women by significantly favoring logical intelligence. Law School functionally discriminates against women (1) by not providing women access to the prime benefits of the institution and

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ventory, created by Rita and Kenneth Dunn; Right Brain/Left Brain Theories, described by Linda Verlee Williams; The Myers—Briggs Type Indicator, developed by Katherine Briggs and her daughter, Isabel Briggs Myers; Auditory, Visual, and Tactile Learners, categorized by Lynne Celli Sarasin; The Theory of Multiple Intelligences, developed by Howard Gardner; and Adult Learning Theory, chiefly proposed by Malcom S. Knowles.

9. See Stropus, *supra* note 5, at 462–65 (discussing how scholars argue that nontraditional students perceive the Langdellian method as reflecting "white male values, created for those who are assertive, argumentative, confrontational, controlling, impersonal, logical, and abstract").
10. See Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 456–57 (1989) (describing how the discourse of Blue Book examinations is predominantly a masculine discourse, which employs values, techniques, and concepts that are more widely known among men than women). See also Torrey, *supra* note 2, at 288 (stating that law school examinations "tend to better evaluate responses to time pressure, individualist merit, and reasoning (considered by many to be male-dominated traits) and less well at evaluating creativity, nurturance, and motivation (considered by many to be female-dominated traits)").
11. See GUINIER ET AL., *supra* note 2, at 62 (discussing how a significant number of women learn their place at the bottom of the gender hierarchy based on the "combination of highly visible, competitive pedagogical strategies in large first-year classrooms, peer hazing, and an institutionalized emphasis on replacing 'emotions' with 'logic' and 'commitments' with 'neutrality' may be sufficient to socialize many students into their 'place,' even those who are trying to resist").
12. See GUINIER ET AL., *supra* note 2, at 59–62.
13. See Zanglein & Stalcup, *supra* note 8, at 482–91.

only rewarding those adept at logical intelligence; (2) by not offering women a pedagogy with diverse materials and approaches based on all of the intelligences; and (3) by making women feel that they have not had an impact on the institution because it has not evolved to reflect the diversity of intelligences that are in the legal community and required of the legal community.

## I. THEORY OF MULTIPLE INTELLIGENCES

In Gardner's seminal work *Frames of Mind*,<sup>14</sup> he challenges the traditional view that intelligence is a "single faculty" so that a person is "smart" or "stupid" across the board.<sup>15</sup> Defining "intelligence" as a "bi-psychological potential to process information,"<sup>16</sup> Gardner identifies several different kinds of cognitive intelligences including: Logical/Mathematical Intelligence ("logical"), Verbal/Linguistic Intelligence ("linguistic"), Visual/Spatial ("spatial") Intelligence, Interpersonal Intelligence, and Intrapersonal Intelligence.<sup>17</sup> Logical Intelligence is the capacity "to calculate, quantify, [and] consider propositions and hypotheses . . . ."<sup>18</sup> Linguistic intelligence is the capacity "to think in words and to use language to express and appreciate complex meanings."<sup>19</sup> Spatial intelligence is the capacity "to perceive external and internal imagery, to recreate, transform, or modify images, to navigate oneself and objects through space, and to produce or decode graphic information."<sup>20</sup> Interpersonal intelligence is the capacity "to understand and interact effectively with others."<sup>21</sup> Intrapersonal Intelligence is the capacity "to construct an accurate perception of oneself . . . ."<sup>22</sup>

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14. HOWARD GARDNER, *FRAMES OF MIND: THE THEORY OF MULTIPLE INTELLIGENCES* (10th ed. 1993) [hereinafter GARDNER, *FRAMES OF MIND*].

15. HOWARD GARDNER, *INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY* 34 (1999) [hereinafter GARDNER, *INTELLIGENCE REFRAMED*].

16. GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 33-34.

17. GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 41-43. Gardner also recognizes Bodily-Kinesthetic Intelligence, *see* GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 42, 95-96, and Musical Intelligence, *see* GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 103-04. However, these two Intelligences are not relevant to this examination of legal education.

18. Linda Campbell et al., *TEACHING AND LEARNING THROUGH MULTIPLE INTELLIGENCES* i, xvi (2d ed. 1999) (describing briefly the intelligences postulated by Gardner).

19. Campbell et al., *supra* note 18, at xvi.

20. Campbell et al., *supra* note 18, at xvi.

21. Campbell et al., *supra* note 18, at xvi.

22. Campbell et al., *supra* note 18, at xvi.

While legal practitioners draw upon many of these intelligences,<sup>23</sup> law school narrowly concentrates on Logical Intelligence.

### *A. Logical Intelligence*

Traditional schooling, traditional intelligence testing, and most standardized tests are written for and reward Logical thinking.<sup>24</sup> Logical intelligence involves the capacity to formulate and apply abstract rules,<sup>25</sup> use long chains of reasoning to develop theories,<sup>26</sup> and understand and articulate logical patterns.<sup>27</sup> These are key skills for anyone who works with appellate decisions on a regular basis (e.g. the appellate lawyer and the 1st-year law student). Appellate lawyers, judges, and law clerks use Logical Intelligence to extract abstract legal holdings from appellate decisions, apply them to new fact patterns, and make reasoned arguments to justify rulings. The first-year law student spends much of her time doing these same things. Law school uses this logical realm of the appellate decision to teach and evaluate.

#### 1. Socratic Case Method

Most first year law students learn using the Socratic Case Method.<sup>28</sup> Christopher Columbus Langdell, Dean of Harvard Law School in the late 1800s, developed the Socratic Case Method.<sup>29</sup> Dissatisfied with the apprenticeship model of legal education, Langdell wanted to “institutionalize”<sup>30</sup> legal education to become more academic than skill

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23. Gardner is also postulating Naturalist Intelligence, *see* Campbell et al., *supra* note 18, at 48–52, and Moral Intelligence, *see* Campbell et al., *supra* note 18, at 66–67.

24. *See* GARDNER, INTELLIGENCE REFRAMED, *supra* note 15, at 41. Gardner notes that Linguistic Intelligence has also been valued in traditional education but does not comment on postgraduate education. This paper argues that legal education is focused primarily on Logical Intelligence and therefore those who may have done well in traditional educational environments may not do as well in law school due to their linguistic intelligence.

25. *See* GARDNER, FRAMES OF MIND, *supra* note 14, at 135.

26. *See* GARDNER, FRAMES OF MIND, *supra* note 14, at 137.

27. *See* GARDNER, FRAMES OF MIND, *supra* note 14, at 135.

28. *See* Stropus, *supra* note 5, at 456 (noting that the Socratic Case Method remains the predominant teaching methodology used in law schools today for doctrinal courses).

29. *See* Laura G. Holland, *Invading the Ivory Tower: The History of Clinical Education at Yale Law School*, 49 J. LEGAL EDUC. 504, 505–06 (1999) (examining the development of Langdell’s Socratic Case Method).

30. *See* Holland, *supra* note 29, at 505–06.

oriented.<sup>31</sup> Langdell's Socratic Case Method, formerly known as the "Harvard Method,"<sup>32</sup> required students to learn by reading appellate decisions, answering questions about the holding and reasoning of those appellate decisions, and applying the rules of those appellate decisions to new fact patterns.<sup>33</sup> By focusing on abstract legal principles from the appellate cases, Langdell purposefully emphasized Logical Intelligence and rejected most of the other intelligences.<sup>34</sup> The Socratic Case Method has been criticized for being too logical because it is "overly formalistic and theoretical,"<sup>35</sup> "confined to cold legal reasoning,"<sup>36</sup> "a legal science,"<sup>37</sup> and "analysis in a vacuum."<sup>38</sup> Even though very few law students will practice appellate law after graduation, Langdell's Socratic Case Method is the predominant teaching methodology used in law schools today for doctrinal courses.<sup>39</sup>

## 2. Examinations

In addition to teaching, most law schools emphasize logical intelligence in the evaluation of students as well. Many first-year courses evaluate students using standard bluebook examinations.<sup>40</sup> These timed tests require students to "issue spot" and apply the holdings of appellate decisions from their case books to a complex set of facts and to use the logic of precedential reasoning to predict possible legal outcomes.<sup>41</sup> This logical testing has been criticized for ignoring the importance of creative

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31. See Holland, *supra* note 29, at 505–06; Stropus, *supra* note 5, at 452.

32. See Holland, *supra* note 29, at 505–06.

33. See Stropus, *supra* note 5, at 452–53.

34. See Stropus, *supra* note 5, at 453.

35. See Stropus, *supra* note 5, at 456.

36. See Stropus, *supra* note 5, at 461.

37. See Stropus, *supra* note 5, at 452.

38. See Stropus, *supra* note 5, at 461.

39. See Stropus, *supra* note 5, at 456.

40. Kissam, *supra* note 10, at 437–40 (discussing the many different examination problems employed, including: the classic "issue spotter" essay question; advocacy questions that invite a more deliberate construction of complex arguments; various sorts of short-answer questions that test for issue identification, rules specification, or rule application; and questions that ask students to evaluate different aspects of legal doctrine). See also Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 J. LEGAL EDUC. 448, 455 (1999) (stating that the majority of law schools emphasize and measure only the logical intelligence).

41. Kissam, *supra* note 10, at 440.

synthesis and “legal imagination,”<sup>42</sup> disregarding “practical judgments,”<sup>43</sup> and “not adequately reflect[ing] all the types of intelligence that the successful lawyer needs.”<sup>44</sup> While ignored by a significant proportion of law school education, particularly the first-year courses,<sup>45</sup> the other intelligences are integral to the varied and multifaceted roles of lawyering.

### B. Linguistic Intelligence

Broadly, linguistic intelligence involves “sensitivity to spoken and written languages, the ability to learn languages, and the capacity to use language to accomplish certain goals.”<sup>46</sup> Gardner explains that linguistic intelligence can be rhetorical, mnemonic, explanatory, or metalinguistic.<sup>47</sup> Each of these characteristics corresponds to important attorney roles.

The rhetorical verbal-linguist is aware of the different functions of language as used in different contexts and how it may excite, stimulate, convey, and convince.<sup>48</sup> For example, the attorney litigator, lobbyist, or politician strategically may use language for these purposes. The mnemonic verbal-linguist uses language to remember information<sup>49</sup> and is sensitive to word choice.<sup>50</sup> A transactional attorney displays these skills when drafting, negotiating, and interpreting real estate, corporate, and other documents. The explanatory aspect of linguistic intelligence is the ability to use language to teach.<sup>51</sup> Lawyers are often described as “teachers”<sup>52</sup> when they use language to “educate” non-lawyers including

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42. See Philip N. Meyer, “Fingers Pointing at the Moon:” *New Perspectives on Teaching Legal Writing and Analysis*, 25 CONN. L. REV. 777, 781 (1993).

43. Kissam, *supra* note 10, at 441.

44. Lustbader, *supra* note 40, at 455 (discussing how effective teachers “find ways to teach and evaluate a broader range of intelligences, and they encourage their students to master more than one type”).

45. See Stropus, *supra* note 5, at 480–81 (discussing how the main doctrinal courses tend to emphasize logical intelligence, while some of the practical skills training courses tend to incorporate the other intelligences).

46. GARDNER, INTELLIGENCE REFRAMED, *supra* note 15, at 41.

47. See GARDNER, FRAMES OF MIND, *supra* note 14, at 78.

48. See GARDNER, FRAMES OF MIND, *supra* note 14, at 77–78.

49. See GARDNER, FRAMES OF MIND, *supra* note 14, at 78.

50. See GARDNER, FRAMES OF MIND, *supra* note 14, at 75.

51. See GARDNER, FRAMES OF MIND, *supra* note 14, at 78.

52. See Kimberlee K. Kovach, *The Lawyer as Teacher: The Role of Education in Lawyering*, 4 CLINICAL L. REV. 359, 360–61 (1998) (describing how “the lawyer serves as the intermediary between the legal system and the consumers of that system, the clients, often trying to make the law meaningful”). Kovach contends that awareness of the



clients, juries, and other parties about complex legal issues.<sup>53</sup> Linguistic Intelligence also includes what Gardner calls “metalinguistic analysis”—the “ability to use language to reflect upon language”<sup>54</sup> and a sensitivity to the meaning of words and what they imply.<sup>55</sup> A lawyer or judge demonstrates this linguistic intelligence when using the canons of construction to draft, interpret, and make arguments about language and its implications as used in a contract, statute, or other legal document. A litigator or negotiator uses her emotional experience to choose words that have favorable connotations for her client’s interests. For example, attorneys on different sides may use word connotations to describe a domestic violence episode in very different ways. While the defense attorney might reluctantly concede that the “his overworked client might have been a bit rough when confronting his wife about her adulterous affair,” the prosecuting attorney speaks of the “vicious, cruel way in which the defendant punched his small, frail wife in the mouth, knocking out two teeth.” Both attorneys use the emotional images triggered by language to emphasize and de-emphasize facts favorable to the respective parties.

### C. Visual-Spatial Intelligence

Visual-spatial intelligence includes the ability to perceive and manipulate forms,<sup>56</sup> use graphic manipulation symbolically,<sup>57</sup> and discern similarities across diverse domains.<sup>58</sup> The ability to perceive and manipulate forms requires appreciating how that form will be viewed from different angles.<sup>59</sup> A patent attorney uses this ability to understand her client’s product or technology. Likewise, a prosecutor or personal injury attorney uses this ability to understand complex forensic evidence.

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lawyer’s educator role should begin—and develop—in law school. See also Gail A. Janquish & James Ware, *Adopting an Educator Habit of Mind: Modifying What It Means to “Think Like a Lawyer”*, 45 STAN. L. REV. 1713, 1715 (1993) (contending that lawyer “habits of mind, thinking in an abstract hypothetical–deductive style, often result in communication to nonlawyers that is deficient”). The authors argue that to better serve their clients, lawyers should view themselves as “educators and tailor their client communications accordingly.”

53. See Kovach, *supra* note 52, at 360–61; Janquish & Ware, *supra* note 52, at 1715.

54. See GARDNER, FRAMES OF MIND, *supra* note 14, at 78.

55. See GARDNER, FRAMES OF MIND, *supra* note 14, at 77.

56. See GARDNER, FRAMES OF MIND, *supra* note 14, at 174.

57. See GARDNER, FRAMES OF MIND, *supra* note 14, at 175–77.

58. See GARDNER, FRAMES OF MIND, *supra* note 14, at 174.

59. See GARDNER, FRAMES OF MIND, *supra* note 14, at 174.

The ability to symbolically use graphic manipulation involves the “capacity to produce a graphic likeness of spatial information” such as maps, diagrams, or charts.<sup>60</sup> A trial attorney uses this ability to create visual aids to explain complex scientific evidence to a lay jury. The ability to discern similarities across diverse domains involves the use of metaphor and the ability to perceive patterns.<sup>61</sup> An attorney uses metaphor to help a jury or client understand complex information by relating it to something the jury already knows. Likewise an attorney must also be able to perceive patterns. Like a master chess player,<sup>62</sup> an attorney uses visual/spatial intelligence to “relate a perceived pattern to past patterns, and to develop the present position into an overall game plan.”<sup>63</sup>

#### *D. Interpersonal And Intrapersonal Intelligences*

An effective attorney knows other people and herself. The former is *interpersonal* intelligence and the latter is *intrapersonal* intelligence. Interpersonal intelligence is the “capacity to understand and make distinctions between the intentions, motivations, and desires of other people.”<sup>64</sup> It also includes the ability to counsel and nurture, work well with others,<sup>65</sup> and influence a disparate group.<sup>66</sup> A lawyer uses interpersonal intelligence to interact with clients, judges, adversaries, witnesses, experts, and law enforcement.<sup>67</sup> The lawyer relies on interpersonal intelligence to be an effective counselor who communicates, listens, and empathizes with a client.<sup>68</sup> A lawyer then uses interpersonal intelligence

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60. See GARDNER, *FRAMES OF MIND*, *supra* note 14, at 176.

61. See GARDNER, *FRAMES OF MIND*, *supra* note 14, at 176.

62. Cf. GARDNER, *FRAMES OF MIND*, *supra* note 14, at 192–95 (illustrating the use of visual-spatial intelligence to strategize by examining master chess players).

63. See GARDNER, *FRAMES OF MIND*, *supra* note 14, at 192–95.

64. GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 43.

65. See GARDNER, *INTELLIGENCE REFRAMED*, *supra* note 15, at 43.

66. GARDNER, *FRAMES OF MIND*, *supra* note 14, at 239.

67. See Nancy L. Schultz, *How Do Lawyers Really Think*, 42 J. LEGAL EDUC. 57, 59–61 (1992) (describing how good “lawyers should have good interactive skills—communicating, listening, sensitivity, empathy”).

68. Schultz, *supra* note 67, at 61; John Sonsteng, *Learning By Doing: Preparing Law Students for the Practice of Law*, 21 WM. MITCHELL L. REV. 111, 112–14 (1995) (citing the ten “Fundamental Lawyering Skills” from the MacCrate Report, which included the following: problem solving; legal analysis and reasoning; legal research; factual investigation; communication; counseling; negotiation; litigation and alternative dispute resolution procedures; organization and management of legal work; and recognizing and resolving ethical dilemmas).

to negotiate, mediate, persuade and otherwise advance her client's interests.

Intrapersonal intelligence is the capacity to understand oneself and to use such information to "effectively regulate one's life."<sup>69</sup> A lawyer must use this intrapersonal intelligence and listen to her conscience as she has a "unique responsibility to be ethical."<sup>70</sup>

## II. EMPIRICAL STUDY OF INTELLIGENCE PREFERENCE AND GENDER CORRELATION

### *A. Kaufman Study*

This study was conducted to determine whether male and female law students express differences in preferring logical intelligence over the other Gardner intelligences. This study is novel in using Gardner's conceptualization of multiple intelligences to explore gender differences with respect to preference for logic-based learning models. Because Gardner describes different kinds of intelligences, there was an opportunity to see if the female students preferred a different kind of intelligence, instead of merely confirming that the female students were not comfortable with logical intelligence. The hypothesis was that the male students would be significantly more comfortable with logical intelligence than the female students and that the female students would be significantly more comfortable with another intelligence such as interpersonal intelligence.

### *B. Procedure*

The participants were randomly selected and consisted of first, second and third-year law students. Each of the 450 participants completed a one-page questionnaire. The author of this paper developed the questionnaire and supervised her research assistants in scoring it. Subjects were informed that participation was voluntary.

The questionnaire asked for the participant's demographic information including: age, race, year in law school, gender, undergraduate major, and full or part-time status. Directly beneath the demographic section, the questionnaire asked the participant to select from a list of 25

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69. GARDNER, INTELLIGENCE REFRAMED, *supra* note 15, at 43.

70. Schultz, *supra* note 67, at 59–61; *See also* Sonsteng, *supra* note 68, at 112.

words and 25 phrases describing various personal characteristics that “best describe” them. Each of the characteristics pertained to one of Gardner’s five Multiple Intelligences.

Participants’ selections were categorized so that each received a logical score, linguistic score, visual score, interpersonal score, and intrapersonal score. Each score signified how many times a participant chose a logical preference, a linguistic preference, an interpersonal preference, an intrapersonal preference, or a visual preference. For example, the questionnaire received a logical score of 2 (choosing “logical” and “rational”); a linguistic score of 2 (choosing “grammatical” and “listening for the connotations”); an interpersonal score of 2 (choosing “sociable” and “voicing concerns”); an intrapersonal score of 2 (choosing “instinctive” and “assessing own work”) and a visual score of 2 (choosing “maps & diagrams” and “seeing big picture”). Although visual/spatial, logical, linguistic, interpersonal, and intrapersonal intelligences were all observed during the investigation, the researchers found that the most statistically significant results came from the logical and linguistic intelligences as a function of gender.

### *C. Statistical Analysis*

Demographic data were analyzed using analysis of variance (ANOVA) and the chi-square test. Comparisons were made between and among groups based on demographic categories. Comparisons in all groups were considered to be significant with probability values (P),  $P < 0.05$ . A principle components factor analysis with one-way ANOVA was run on the total pool of survey scores. Normally distributed data are presented as the Mean and Standard Deviation (“SD”) in each category. The Mean is the average score for the category. The Standard Deviation is a number that reflects how the distribution of scores is centered around the Mean. The primary statistical analysis tool used was Statistica® software.

### *D. Results*

The results are striking. The most notable results showed that male law students significantly selected logical intelligence more than female law students and that female law students significantly selected linguistic intelligence more than male law students (See Table 1). Female students significantly selected linguistic intelligence more than male law students.

For linguistic intelligence, female students displayed a Mean of 1.55 with a Standard Deviation of .25, while male students displayed a Mean of 1.12 with a Standard Deviation of .08 (See Fig. 1). Out of the possible 5 points for each category, the results indicated the following: For Logical Intelligence, male students displayed a Mean of 2.42 with a Standard Deviation of .81, while female students displayed a Mean of 1.82 with a Standard Deviation of = .47 (See Fig. 2). When placing the charts next to each other, an inverse mirror effect is revealed so that the men selected logical attributes to describe themselves almost as often as the women selected linguistic attributes to describe themselves. This occurs at every level of student. The first-year male students selected logical characteristics (Mean = 2.59, Standard Deviation = .88) almost as much as the first-year female students selected linguistic characteristics (Mean = 1.64, Standard Deviation = .33) (See Fig. 3). The upper-level male students selected logical qualities (Mean = 2.17, Standard Deviation = .74) almost as often as the upper-level female students selected linguistic qualities (Mean = 1.44, Standard Deviation = .16) (See Fig. 4). All other observed categories yielded insignificant results and were therefore omitted.

TABLE I  
LINGUISTIC AND LOGICAL INTELLIGENCE SCORES BY GENDER

	LINGUISTIC INTELLIGENCE		LOGICAL INTELLIGENCE	
	Mean	Standard Deviation	Mean	Standard Deviation
All Female Students	1.55	.25	1.12	.08
All Male Students	1.82	.47	2.42	.81
First-Year Female Students	1.64	.33	1.77	.36
First-Year Male Students	1.1	.033	2.59	.88
Upper-Level Female Students	1.44	.16	1.89	.63
Upper-Level Male Students	1.29	.29	2.17	.74

FIGURE 1

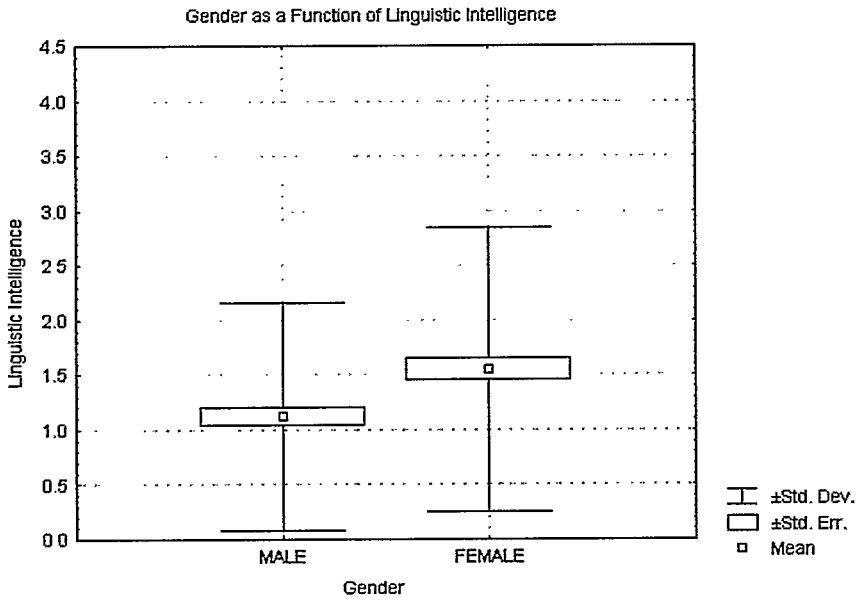


FIGURE 2

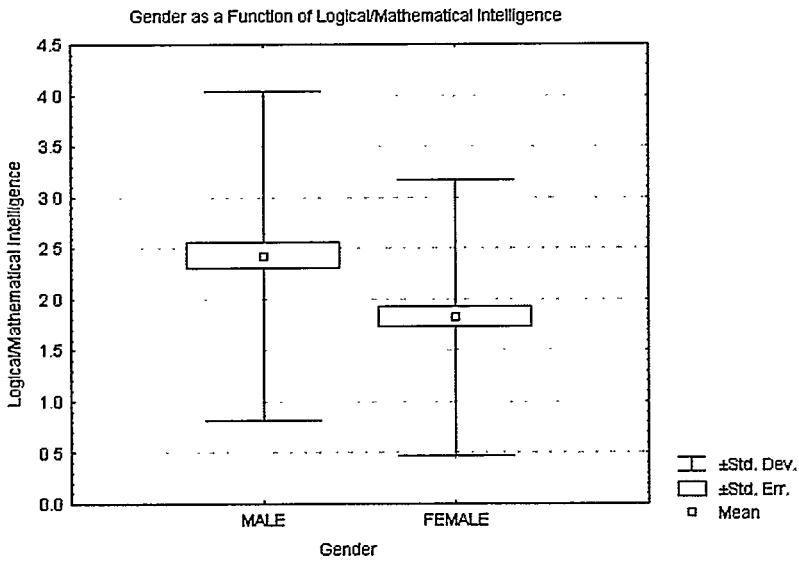


FIGURE 3

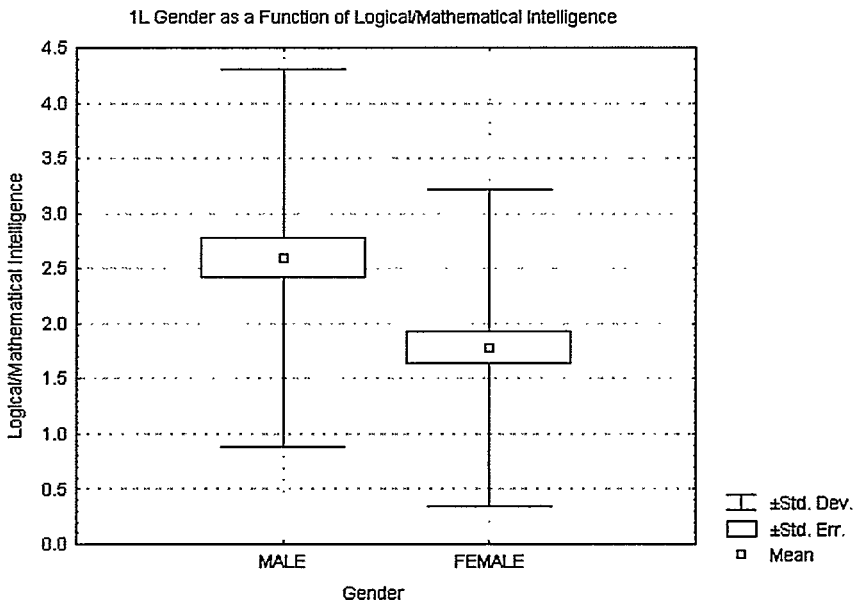
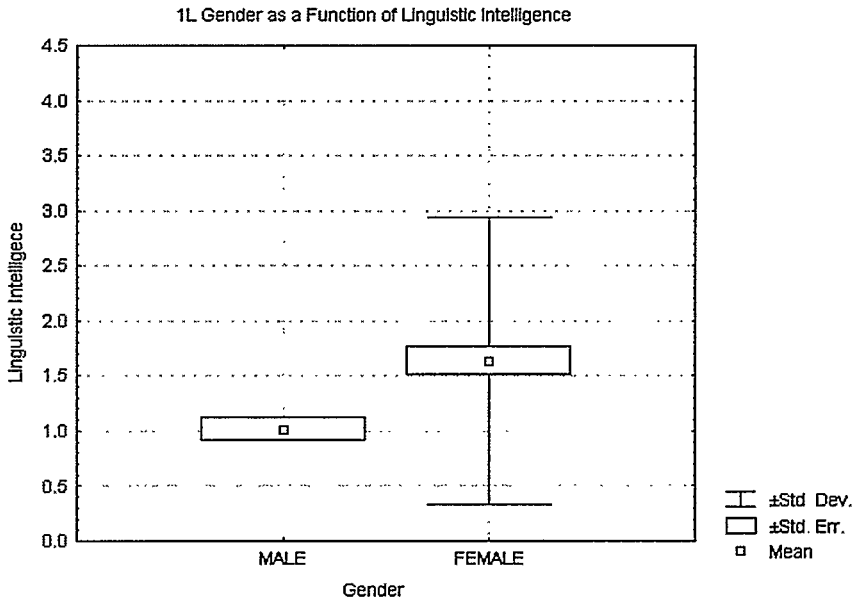
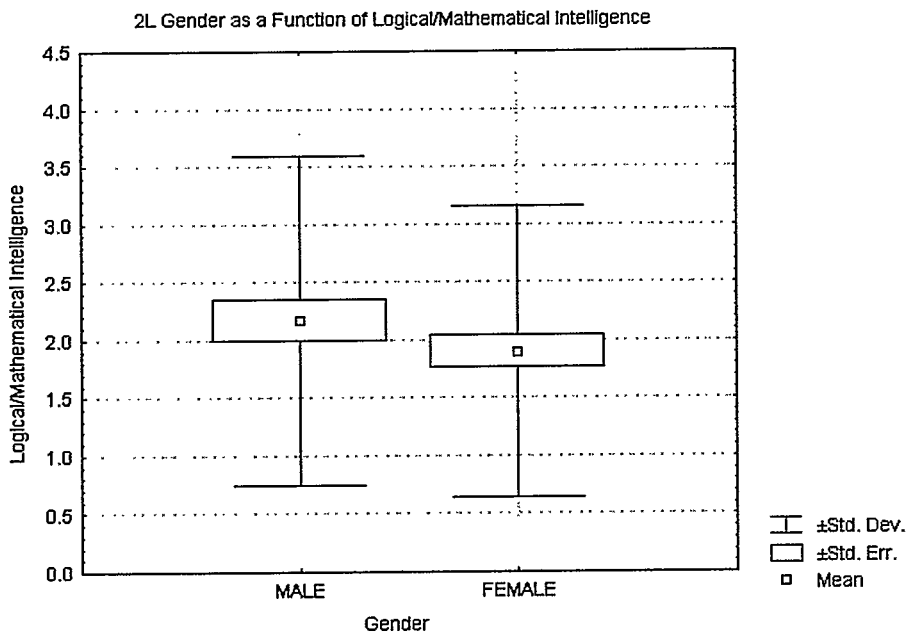
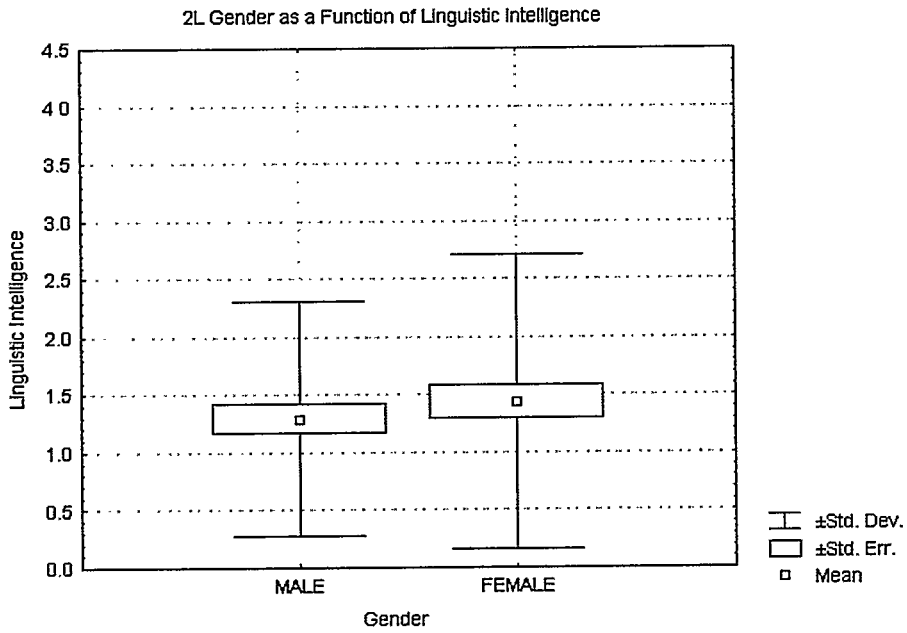


FIGURE 4





## III. ANALYSIS AND IMPLICATIONS

A. *Functional Discrimination*

Even though women students with “other intelligences” are admitted in the law school door, they experience functional discrimination. While “Functional Discrimination” is a concept developed in this paper, the name was inspired by Lani Guinier who urges legal educators to rethink conventional norms “by reconsidering the fairness and *functionality* of an educational culture that trains, teaches, [and] evaluates everyone using a one-size-fits-all approach. . . .”<sup>71</sup> Similarly, Susan P. Sturm queries, “Does [the role that law school is preparing graduates to serve] equip graduates to FUNCTION productively and constructively as citizens of both the profession and the community?”<sup>72</sup> She answers, “It may be that the profession has diversified to the point that no single, central, organizing paradigm will be adequate. At the least, the overarching concept of professionalism may need to be one that is inclusive, if not integrative, of a variety of roles and *functions*.”<sup>73</sup>

Therefore, this paper argues that functional discrimination occurs when law schools:

1. Do not provide women access to the prime benefits of the institution by only rewarding those comfortable with logical intelligence;
2. Does not offer women a pedagogy with diverse materials and approaches based on all of the intelligences;
3. Does not make women feel that they have had an impact on the institution by not evolving to reflect the diversity of intelligences that are in the law school community as well as the professional community.

## 1. Logical Intelligence Bias

Law school commits functional discrimination because it does not give women students access to the prime benefits of the institution. Law

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71. GUINIER ET AL., *supra* note 2, at 1 (emphasis added).

72. Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y 119, 126 (1997).

73. Sturm, *supra* note 72, at 135 (emphasis added).

school creates an artificial hierarchy of intelligences that unfairly rewards those traditional students who think with logical intelligence at the expense of those nontraditional students who think with other intelligences. As Guinier has said, "Law school valorizes sorting . . . but [does] not necessarily develop each student's true potential."<sup>74</sup>

Indeed, law school grades in the first year are mostly based on blue book exams that test logical intelligence alone.<sup>75</sup> Moreover, students who do well on these first-year exams have access to prestigious extracurricular activities such as Law Review.<sup>76</sup> These students also have better employment prospects at more impressive law firms, with high-level government agencies, and for prestigious judicial clerkships.<sup>77</sup> Therefore, this class ranking based on first-year logical intelligence can significantly impact a student's career.<sup>78</sup> For these reasons, grades and the benefits received from good grades need to be more "democratic"<sup>79</sup> to reflect the diversity of intelligences among law students as well as the diversity of intelligences required in the legal profession.

## 2. Inflexible Legal Pedagogy

Many law schools do not offer women students a diverse pedagogy.<sup>80</sup> As discussed above, the Socratic Case Method emphasizes logical intelligence at the expense of other important perspectives. Not only would non-traditional students benefit from a multiple intelligence perspective, but all students in the law school class would benefit as well.

## 3. Diversity of Intelligences Ignored

Diversity adds to the educational experience of law school by bringing together people of various backgrounds, life experiences,<sup>81</sup> and kinds of intelligences. Individual students come to law school with "their own

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74. GUINIER ET AL., *supra* note 2, at 2.

75. See Kissam, *supra* note 10, at 439.

76. See Kissam, *supra* note 10, at 463.

77. See Kissam, *supra* note 10, at 462–66.

78. See Kissam, *supra* note 10, at 463–65.

79. See Kissam, *supra* note 10, at 463.

80. See Stropus, *supra* note 5, at 456 (noting that the Socratic Case Method remains the predominant teaching methodology used in law schools today for doctrinal courses).

81. Garner K. Weng, *Look at the Pretty Colors! Rethinking Promises of Diversity as Legally Binding*, 10 LA RAZA L.J. 753, 763–65 (1998).

distinct beliefs, ideas, biases, fears,<sup>82</sup> and intelligences. Surrounding themselves with students of different backgrounds who may have different kinds of intelligences enables them to grow and develop so that they can overcome their erroneous misconceptions and acquire the depth they will need to be effective attorneys who can use other intelligences besides logical intelligence. The whole class benefits when a case is taught from a multiple intelligence perspective.

#### 4. Multiple Intelligence Method Case Analysis

Consider Judge Posner's opinion in the case of *Susan Wassell v. Wilbur and Florena Adams* from a multiple intelligence perspective.<sup>83</sup> From a logical perspective, the "relevant" facts of this case are as follows: The plaintiff stayed in a motel owned by the defendants; plaintiff voluntarily opened the door at 1:00 am without looking through a glass window and was raped; plaintiff did have an opportunity to escape the room when the rapist was in the shower; defendants never warned plaintiff that there had been one rape and two robberies at the motel in the last seven years; and defendants did not employ a security guard at the motel or put a telephone in the motel room. The jury found the defendants three percent negligent and the plaintiff ninety-seven percent negligent and therefore awarded the plaintiff \$25,000 in damages. Plaintiff then asked the trial judge to set aside the verdict because the defendants had been willful and wanton in their conduct, and thus, plaintiff's negligence was irrelevant. The court held that defendants' actions were not willful and wanton because they did not consciously disregard a high probability of harm.<sup>84</sup>

From a logical perspective, this may be a somewhat interesting case about contributory negligence, but it becomes much more interesting when examining it from a multiple intelligence perspective. From a linguistic viewpoint, Posner's word choice provides a fascinating insight into his own biases. For example in the opinion, he describes the rapist as "a respectably dressed black man"<sup>85</sup> although he does not mention the race of the other parties. In disclosing the rapist's race when it is not relevant to the issue of the case, Posner perpetuates the stereotype of the black man as a violent criminal, as unrespectable, and as poor. An in-

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82. Weng, *supra* note 81, at 764.

83. *Wassell v. Adams*, 865 F.2d 849 (7th Cir. 1989). The author acknowledges Jim Col-liton for suggesting the use of this case.

84. *Wassell*, 865 F.2d at 854.

85. *Wassell*, 865 F.2d at 851.

class linguistic analysis of Posner's language would illuminate the conscious and unconscious biases jurists, professors, and students may bring to their legal analyses as well.

From an interpersonal perspective, this case is fascinating as well. Posner engages in pseudo-psychoanalysis of the plaintiff in the very first line of the decision. The opinion opens with the following description of the plaintiff:

The plaintiff, born Susan Marisconish, grew up on Macaroni Street in a small town in a poor coal-mining region of Pennsylvania—a town so small and so obscure that it has no name. She was the ninth of ten children, and as a child was sexually abused by her stepfather.<sup>86</sup>

Right from the beginning, Posner gives the impression that the plaintiff is unsophisticated, provincial, and tainted by past abuse. What is Posner's purpose in including this information? It is not relevant to whether the defendants' actions were wanton and willful based on the probability of harm. If anything, Posner's revelations create a psychological portrait of the plaintiff as a naive hysterical victim, minimizing the actions of the rapist and the motel owners. The anger that students might feel toward Posner for stereotyping the plaintiff, as well as the rapist, can be expressed by considering the case from an intrapersonal perspective.

### *B. Linguistic Intelligence Undercuts Logical Intelligence*

In an ideal law school setting, the more "male" logician and the more "female" linguist would complement and learn from each other. After all, both intelligences are integral for success as an attorney. Unfortunately in our law schools, the logician and the linguist are often at odds with one another. In fact, those characteristics that make one a talented linguist might actually make it difficult to succeed in the logical world of law school.

The linguist uses context to understand the meaning of language; the logician, on the other hand, dissects a principle from its context, removing it to the realm of the abstract. The Socratic Case Method and the issue-spotting bluebook examination emphasize and reward abstract

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86. *Wassell*, 865 F.2d at 850.

thinking.<sup>87</sup> However, the linguistic thinker uses her own emotional experience to understand the various subtleties and connotations of language choices. In comparison, the logician focuses on abstract principles in distant objective ways. Finally, the linguist connects and relates ideas and meanings while the logician places information into discrete categories with clear boundaries. The logical pedagogy of law school requires students to create myriad discrete categories of information based on causes of action, elements, rules, exceptions, etc.<sup>88</sup> The linguistic student who finds connection and difference among many things will have a hard time reining in her divergent thinking to enforce/conform to those rigid boundaries.

### *C. Alienation and Muting*

Many women feel alienated from a law school that does not recognize their linguistic capabilities. For example, women studied at the University of Pennsylvania Law School and Yale Law School expressed profound alienation from a narrowly logical pedagogy that devalues and penalizes the linguistic concerns of empathy, relational logic, social context, plurality of interests and circumstantial justifications.<sup>89</sup> According to Muting Theory,<sup>90</sup> this alienation comes from the dominant logical discourse creating and controlling women's law school experiences in a way that is inauthentic for them because it does not include their way of thinking.<sup>91</sup> Law school's preference for logical discourse and the "imperfect fit"<sup>92</sup> between language and experience lead to muting of women in the following ways: (1) women "may be viewed as 'inarticulate' [in the classroom] because of their inability to express themselves using the dominant language;"<sup>93</sup> (2) women may be silent about matters which

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87. Kissam, *supra* note 10, at 440-41.

88. See Kissam, *supra* note 10, at 440-41.

89. See GUINIER ET AL., *supra* note 2, 66-67. See also Suzanne Home & Lois Schwartz, *supra* note 2, at 9-10 (1989) (citing the Yale study which found that the content of legal education "devalues factors important to women, such as social context, plurality of interests, or circumstantial and/or economic justification for people's actions").

90. Stanchi, *supra* note 6, at 17 (stating that "[t]he term 'muting' originated with Edwin and Shirley Arderer, social anthropologists who, in the 1970s, began to examine how social anthropology had ignored women and their voices").

91. Stanchi, *supra* note 6, at 22-23 (noting how legal writing pedagogy leaves little room for personal definitions of context, or the development of a personal, authentic voice).

92. Stanchi, *supra* note 6, at 19.

93. Stanchi, *supra* note 6, at 19.

concern them because there is no mode of expression in the dominant logical model;<sup>94</sup> and (3) “the existence of a dominant [logical discourse] and the requirement that an individual [engage] in it . . . mean[s] that alternative methods of expression will be suppressed or inhibited.”<sup>95</sup> Linguistic intelligence, like language in Stanchi’s description of muting theory, may be inhibited if women are viewed as inarticulate in the Socratic classroom when they express themselves emphasizing linguistic characteristics differing from the dominant logical model. Moreover, women may be silent about linguistic matters that concern them because there is no mode of expression for them in the dominant logical model.

Thus, if women are required to engage in the dominant logical discourse, alternative intelligences, such as linguistic intelligence, will continue to be suppressed or inhibited. Talking to colleagues about this paper revealed many examples of this kind of muting. One colleague told me that her criminal law professor silenced her when she said she felt “uncomfortable talking about rape as a sex crime.” Another colleague told me the professor rolled his eyes when she spoke of her personal experiences as an adoptee. A third colleague told me that she never participated in class after being reprimanded by a professor because she requested that he refer to the female students as “women” rather than “gals.”

### CONCLUSION

The lawyer of the twenty-first century is basically a problem solver.<sup>96</sup> According to the MacCrate Report, a lawyer needs to be able to identify and diagnose a problem, generate alternative solutions and strategies, develop a plan of action, implement the plan, and keep the planning process open to new ideas.<sup>97</sup> As Susan Sturm has observed, “The view of lawyer as problem solver builds on the idea of pluralistic praxis: the need to employ multiple skills and mobilize various kinds of knowledge to solve problems.”<sup>98</sup>

As a problem solver, the attorney must think with multiple intelligences and learn from other intelligences in order to generate

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94. Stanchi, *supra* note 6, at 19.

95. Stanchi, *supra* note 6, at 19.

96. GUINIER ET AL., *supra* note 2, at 15.

97. See Sonsteng, *supra* note 68, at 112–13 n.3.

98. See Sturm, *supra* note 72, at 136–37.

“comprehensive and adaptive responses to complex problems.”<sup>99</sup> The proliferation of information technology and economic globalization require the broad acquisition of knowledge, theory, and skills.<sup>100</sup> As business and social communities grow and diversify, the lawyer is increasingly called upon to be the multicultural expert who herself must be open to and versed in multiple perspectives and multiple intelligences.<sup>101</sup>

To accomplish these goals and train multifaceted lawyers, law schools need to functionally diversify. Functional diversity is so much more than increasing admission statistics. Functional diversity requires law schools to not only admit women, but to accommodate and change as a result of their admission. This symbiotic adaptation benefits the women students by including a diverse pedagogy from which they can learn from and feel comfortable. This adaptation benefits the men students who may be learning new skills that they need in order to be more effective attorneys. This adaptation benefits the legal community that needs versatile problem-solving professionals. Thus, it should not be logician *versus* linguist as adversaries. Rather, the legal academy should encourage logician *and* linguist as collaborators, colleagues, and friends. ♣

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99. Sturm, *supra* note 72, at 143.

100. Wallace Loh, Introduction: *The MacRate Report—Heuristic or Prescriptive?*, 69 WASH. L. REV. 505, 512 (1994) (stating that “[w]hat we teach and how we teach it depends on each school’s vision of the profession and of the world of tomorrow—a fin-de-siècle vision that takes into account current and anticipated trends in society, the bar, and scholarship, as well as fiscal retrenchment, the implications of information technology, the context of economic globalization, ethical preoccupations, and interdisciplinary, critical, and multicultural perspectives”).

101. See Sturm, *supra* note 72, at 133–35.