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Recommended Citation

W. H. Knight et al., A Conversation Among Deans on Results: Legal Education, Institutional Change, and a Decade of Gender Studies, 29 *HARV. J.L. & GENDER* 465 (2006).

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**A CONVERSATION AMONG DEANS
FROM
“RESULTS: LEGAL EDUCATION, INSTITUTIONAL
CHANGE, AND A DECADE OF GENDER STUDIES,”
HARVARD JOURNAL OF LAW & GENDER
CONFERENCE, MARCH 2006**

DEAN EDWARD RUBIN, DEAN W. H. KNIGHT &
DEAN KATHERINE BARTLETT

On March 10, 2006, the *Harvard Journal of Law & Gender*, co-sponsoring with the *Harvard Civil Rights-Civil Liberties Law Review* and the *Harvard Law Review*, hosted a conference, “Results: Legal Education, Institutional Change, and a Decade of Gender Studies,” to address the number of student experience studies that detail women’s lower performance in and dissatisfaction with law school. Rather than advocate for a particular set of responses to the different experiences of men and women in legal education, this conference sought to foster a discussion about the institutional challenges these patterns highlight. As one means of accomplishing this end, law school deans from across the country spoke about their strategies to change legal education. Edward Rubin, dean of Vanderbilt Law School, discussed how law school still acts as a “rite of passage” that is more suited to an era when the public sphere was male-dominated, and suggested reforms in legal curriculum in light of changes in the legal profession. W. H. Knight, dean of the University of Washington School of Law, concentrated on how law school culture might change as to become more rewarding for students and more inclusive of students from diverse backgrounds. Katherine Bartlett, dean of Duke Law School, spoke about the role of technology in infusing the context in which law operates in the study of law, as well as the “Duke Blueprint,” a mission statement that helps students (and faculty) examine the motives and values they will bring to becoming a lawyer.

DEAN EDWARD RUBIN, VANDERBILT LAW SCHOOL

Good afternoon, and thank you for inviting me. I want to talk about the relationship between gender relations and the law school curriculum. The reason I moved to Vanderbilt and became a dean was not because I was anxious to exercise the tremendous amount of power that deans wield, but because I had thought a lot about legal education and I wanted to engage with a law school in the enterprise of rethinking the process. Law

was first introduced to American universities as a program of graduate study in the 1870s, right here at Harvard.¹ Since then, our basic approach to teaching law has remained unchanged. Given the massive changes in law itself, in legal scholarship, in pedagogy, and in our understanding of social practices, it seems to me that the time has come to reconceptualize our century-old approach.

At Vanderbilt, we have tackled the first-year and the upper-class curriculum as two separate components. Regarding the first year, we organized a two-day retreat where I posed a single question to the faculty: If everything else was the same but there had never been a law school in the United States, what would we choose as our introduction to law in the twenty-first century? We concluded that we would design a curriculum that reflected the contemporary practice of law rather than giving students a steady diet of common law and appellate cases. Legal practice has changed a great deal since the development of the law school curriculum. For example, in the 1870s there was no federal regulatory state, globalization was not a concept on many people's lips, and litigation was carried out in a completely different manner. In addition, there was no social science in the United States, so people did not know how to study law as a practice. That is part of the reason no law school that I am aware of has a course on contracts in its first-year curriculum. Students may think they have such a course, but what they actually have is a course in contract adjudication. The students are not reading contracts, negotiating contracts, or drafting contracts. They are not getting a sense of transactional law, which is one-third of legal practice in most of the law firms to which schools like Vanderbilt—or Harvard—send the majority of their students.² The reason is that contracting is not a body of doctrine but a social practice, something that the founders of our present curriculum lacked the intellectual tools to understand or teach.

The upper-class curriculum is more modern, having served as the repository for all the legal developments subsequent to the 1870s, but it is almost completely lacking in structure. It is just a collection of courses, with the identity of these courses determined by individual negotiation between each faculty member and the associate dean. We are addressing this problem at Vanderbilt by organizing the faculty in groups around subject areas, with each group having basically plenary authority to design a curriculum that progresses from the second to the third year in that area.

¹ ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 36–37 (1983).

² See Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 U. TOL. L. REV. 81, 86–87 (2005) (noting that approximately thirty-eight percent of the law school class of 2003 went to work in private practice for small and medium-sized law firms, both of which face the pressure of trying to train associates to specialize in the fields of "litigation, criminal law, corporate law, financing, real estate, tax, estate planning and personal counseling, benefits and human resources law" without the financial resources to do so).

By the third year, the curriculum should involve students in an interactive relationship with a faculty member, perhaps through a year-long research seminar, or through a series of field placements followed by a seminar that analyzes the students' experiences. Each of those groups has a budget to run conferences, bring in speakers, and fund travel. These working groups constitute the governance structure of the school, thus integrating faculty governance with research and curricular development. The only committee we have is the appointments committee.

I would like to discuss gender relations in law school in light of these concerns about legal education and our efforts at Vanderbilt to respond to them. I think there is a danger in focusing on the attitudes of individuals when discussing gender relations. It is easy enough to declare that certain modes of education are gender-biased or male-oriented, based on hypotheses like Carol Gilligan's that women are more concerned about feelings and men are more concerned about abstractions.³ The danger is that this leads very quickly to a new kind of stereotyping. Instead, I want to think about the nature of the law school as an institution and the way in which its institutional features reflect gender-biased attitudes. Rather than trying to discern the real nature of women, or men, my premise is an unquestionable social fact, namely, that the society which produced the institution of law school was male-dominated, and did not design that institution with the idea that women would be part of it.

The anthropologist Arnold van Gennep initiated the idea of rites of passage, rituals that people use to organize their lives by marking transitions from one stage to another or from one place to another.⁴ When people in a primitive society come in from the field and enter their homes, they perform some kind of ritual. Similarly, rituals mark the transition from childhood to adulthood. These are rites of passage. The process of going from one stage to another is what Victor Turner, a follower of van Gennep, calls a "liminal" experience, liminal being the Latin word for "threshold."⁵

Turner analyzes liminality in greater detail by talking about the actual process of transition from one life stage to another.⁶ The transition begins with a separation from what the person experienced before, followed by the liminal period itself, which is a time of ritual and seclusion, and then re-aggregation or reintegration into society.⁷ Turner analyzes one limi-

³ CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

⁴ ARNOLD VAN GENNEP, *THE RITES OF PASSAGE* (Monika B. Vizedom & Gabrielle L. Caffee trans., 1960).

⁵ Victor Turner, *Social Dramas and Stories about Them*, 7 *CRITICAL INQUIRY*, 141, 161-66 (1980); see PHILIP SMITH, *CULTURAL THEORY: AN INTRODUCTION* 81 (2001).

⁶ VICTOR TURNER, *DRAMAS, FIELDS, AND METAPHORS: SYMBOLIC ACTION IN HUMAN SOCIETY* 231, 238 (1974).

⁷ *Id.*

nal institution, which involves tribal societies initiating boys into an essentially adult cult group, as follows:

In ritual seclusion . . . , one day replicates another for many weeks. The novices in tribal initiations waken and rest at fixed hours They receive instruction in tribal lore, or in singing and dancing from the same elders or adepts at the same time. At other set times they may hunt or perform routine tasks under the eyes of the elders. Every day is, in a sense, the same day writ large or repeated. . . . Often but not always, myths are recited explaining the origins, attributes, and behavior of these strange and sacred habitants of liminality.⁸

This sounds disconcertingly like law school. To be sure, it is a familiar trope to satirize modern societies by comparing them with descriptions of more primitive ones, and implicitly noticing the similarity between the two. But the reason why this particular comparison is more than a rhetorical flourish is that law school is so heavily ritualized, and that its ritualistic quality seems to indicate the liminal character of the institution as described by Turner. To take just one example, the first-year curriculum itself is a type of ritual. We have been repeating the same set of courses for 130 years, using a methodology whose conceptual basis we no longer accept. In the 1870s most legal scholarship was based on a theory of law called formalism, and that theory fit perfectly with the first-year curriculum. At present, however, legal scholarship is highly empirical, highly interdisciplinary, and focused on very different kinds of analysis. As a result, it no longer reflects or corresponds to the pedagogic program of the first year. We know the value of the social sciences, we know law is a practice, and we know that it involves an expanded set of issues, but that is not what we are teaching. This disjunction between what we believe about law and what we teach to first-year students strongly suggests that the first-year curriculum is not a rationally conceived educational program, but a repetitious ritual of the kind Turner describes, an initiation rite in the liminal institution that separates students from their former life and re-aggregates them into the closed society of lawyers.

When it was developed in the nineteenth century, this liminal experience was exclusively male.⁹ If I was standing in this room in the 1890s, looking out at Harvard law students, I would see a bunch of men in suits. Today women compose about one-third of our faculty, and about one-half of our students. Thus, merely rethinking legal education at the present time, replacing our nineteenth-century model with a modern one, would probably have beneficial effects for women, even without paying specific

⁸ *Id.* at 238-39.

⁹ See, e.g., STEVENS, *supra* note 1, 82-84 (1983).

attention to gender issues in our rethinking process. Inevitably, the changes we make are going to be affected by the presence of women. The general attitudes of society are going to reflect our current norms and our current attitudes toward gender relations much more accurately than perpetuating a model that was designed in the very different world of the nineteenth century.

But I think we can go beyond that by focusing directly on the liminal character of legal education in its present form. One of the things about a liminal institution is that it reflects something that has historically been associated with male dominance, or what might be called male bonding. Before modern times, basically everyone existed in family units with men, women, and children. That is where people grew up, and that is where women had their primary role. The male members of the society, at some point, usually in their teen years, would leave the home and join some sets of institutions. Those could have been hunting groups in primitive societies, confraternities in the Middle Ages, professional groups in the nineteenth century, or armies in any era. But it was typically men who were leaving the home to join these associations; social institutions were typically a male phenomenon. The liminal experiences associated with entry into these institutions were equally male-oriented. So the whole way we design the transition into a profession, the idea that you separate yourself from the past, that you go through a repetitious ritual and then get reabsorbed or re-aggregated into a group of people who are bonded together and engaged in some joint activity, is an essentially male concept. It is a reiteration of the liminal initiation rituals that have regulated entry into male institutions since the dawn of civilization.

Thus, one way to make law schools less gender-biased, less male-oriented in their conception is to reduce or eliminate their ritualized liminality. It is very odd that we essentially write "abandon all prior knowledge ye who enter" on the doors of law schools, and that we have designed the first year so it minimizes the amount of knowledge students can use from their prior experience. We could really start thinking about what modern law is, and how much it engages with activities and conceptual frameworks in the rest of society. Instead of teaching only common law doctrine, and doing so by reading only judicial decisions, we could introduce courses about regulation, international law, and contract formation. We could give more attention to social change and more attention to social justice. By doing so, we could smooth the transition into law school, making it more continuous with students' prior experience. In addition, we could start teaching about law as an instrument that our society deploys in a wide variety of contexts, and not merely as a specialized body of knowledge that entitles one to enter into the closed society of legal practitioners.

By the second and third year, we could be giving our students a chance not simply to engage in the repetitious ritual of passive learning courses, but the opportunity to do a project and to take ownership for their own

path through education. We could counsel students and give them advice about what courses they should take—not what you should take next semester, but what their plan is for their life, and how it relates to the following two years of legal education. A more interactive and individualized approach of this sort moves away from repetitious ritual and moves toward a different model, not the sort of liminal model of separation, transition, and re-aggregation, but a model that is much more consistent with what we have learned about society, about law, and about pedagogy over the last 130 years. Such a program would have a beneficial effect on the experience of women in law schools because it would be based on the contemporary models of education where women are now represented, as opposed to the ritualized liminality of the past that ushered males into an all-male profession.

DEAN W. H. KNIGHT, UNIVERSITY OF WASHINGTON SCHOOL OF LAW

Thank you for the kind introduction and warm welcome. Good afternoon. I am delighted to join this august panel of friends to speak to you about gender developments in American law schools. As the only representative of a publicly supported law school, I am also honored to be able to offer these thoughts about the special role that public institutions should play in addressing the different experiences women have as students. From the context of gender studies and the status of women within the legal profession, I believe that four letters should be used to analyze and to propel gender success—V, P, L, P—Vision, Perspective, Leadership, and Persistence.

Public law schools have a unique mission in legal education. We were, in fact, established to provide opportunities to a broader spectrum of the nation. In many ways, public schools are intended to reflect the goals of our larger society, those of access, opportunity, and achievement. In law schools today, this focus has raised several concerns about gender, difference, legal pedagogy, and professional success.

The current United States population is fifty-one percent female.¹⁰ However, the estimated 250,000 women attorneys in the nation constitute less than thirty-five percent of the 735,000 positions held by attorneys in 2004.¹¹ Despite this disproportionate gender representation in our profession, today reflects perhaps both the best and worst of times for women in the law. Women enroll in law school in roughly equal numbers to men, and have done so for at least the past five years. According to the Na-

¹⁰ There were 149.1 million women in the United States as of July 1, 2004. There were 144.5 million men. U.S. CENSUS BUREAU, ANNUAL ESTIMATES OF THE POPULATION BY SELECTED AGE GROUPS AND SEX FOR THE UNITED STATES: APRIL 1, 2000 TO JULY 1, 2004 (2004), <http://www.census.gov/popest/national/asrh/NC-EST2004-sa.html>.

¹¹ U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK (2006), <http://stats.bls.gov/oco/ocos053.htm>.

tional Association of Law Placement (“NALP”), men and women are employed overall at the same rate after graduation.¹² Relatively fewer women enter private practice, with more entering government and public interest organizations compared with men. Women who do enter private practice tend to leave at each benchmark in their professional lives in greater numbers than men do. For the most recent year for which NALP has data, women constituted nearly 48% of summer associates, 44% of law firm associates, but only 17% of all partners. These statistical disparities in the trajectory of women from law school to partner suggest that the glass ceiling remains a major barrier for women in the profession. Picture this: more than one-half of the people in our country are women, yet women account for just 15% of the general counsels in Fortune 500 companies. Women account for only 23% of federal district and federal circuit court judgeships.¹³ Clearly, much work remains to be done to improve and to provide equal opportunities for women in the law.

How do we begin to address this disappointing state? Can we do something while students are in law school to prepare women and men better? What can we do to assist in making the profession more aware of the challenges that women face in the practice? What can, and what should, be done by both firms and schools once students graduate?

Vision

To understand the importance of vision in addressing gender disparity, one must look first to history. I speak to you today about the history of my law school because I believe it to be both different than that of most schools and remarkably illustrative of the importance of vision.

The University of Washington Law School (UWLS) was founded in 1899 and presents a rich legacy with respect to gender. More than a century ago, the law school dean handpicked all of the students who would attend the law school—not a bad idea if you are the one choosing! Our first dean, John Condon, began his tenure by choosing the very first twelve people to matriculate at the law school. Of the twelve people selected for our first class, five came from underrepresented backgrounds, including one African American male, a Japanese male, and three women. These choices are all the more significant when you reflect upon the fact that five of the twelve individuals were, at the time, precluded from becoming licensed to practice law in the state.

¹² NATIONAL ASSOCIATION OF LAW PLACEMENT (NALP) DIRECTORY OF LEGAL EMPLOYERS, THE REPRESENTATION OF WOMEN AT MAJOR LAW FIRMS (2005) (showing that women comprised 17.3% of partners at all-size law firms; 44.1% of associates; and 47.9% of summer associates).

¹³ ABA COMMISSION ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION (2001).

I believe that this story tells you much about the founding ideas behind our school, and perhaps other public law schools. The reality is that a law school can, should, and does, produce not just lawyers, but true leaders. To give but one example, the Japanese alumnus from our first class, Takuji Yamashita, became an important human rights activist. Dean Condon's selections demonstrated the importance of having a view of what the world can become rather than having one that simply facilitates more of what already exists. Condon knew that it would take all of us, learning from each other, and learning with each other, to meet the challenges of the day and to help communities develop and evolve. Even though only Caucasian men in Washington in 1899 had the opportunity to practice law, Condon recognized and implemented a very different vision.

More than a hundred years later, that emphasis on potential remains strong at our law school. Today, we bear witness to truly remarkable times with respect to gender. Many universities now have nearly even numbers of women and men enrolled. We are beginning to look more like our nation as a whole. During my time as dean, we have always had women constitute more than half of our student body. Currently, the student body at the UWLS is fifty-eight percent female.

Even with this enrollment success, we researched the performance and success of women in the law school.¹⁴ Did our program of study and pedagogical approach encourage, support, and prepare women and men law students equally well? In 2001, the UWLS conducted a gender study that gathered statistical information on various measures of student performance and faculty hiring. The study sought to examine the experiences of women in our school and involved surveys of the classes of 2002, 2003, and 2004.

Perspective

Undertaking a gender study was important because the process would give us perspective. Learning more about the point of view of women in law school should help us become better teachers. Vision can be refined through perspective. I happen to believe that our pedagogical model does not do as good a job of preparing graduates for the profession as we need to do. While case study and Socratic dialogue (or monologues) have been the hallmarks of our educational model for more almost a century and a half, there is a growing group who think that our teaching models overemphasize conflict. We often think about our teaching tasks as preparing people for a negative result—adversarial battle. We do this despite the fact

¹⁴ Of course, we were inspired by the groundbreaking study conducted at the University of Pennsylvania from 1992 to 1994. See Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 75 (1994).

that most transactions happen smoothly, and most people and their disputes do not end up in court.

More than ever, modern law practice requires attorneys to engage a broad array of people and problems in society. Much of what we do in law school classrooms has a rigidity based in formal legal analysis. Often, that analytical approach ignores or dismisses the lived experiences of many in the classroom. By failing to incorporate those experiences into our teaching, law faculty, at times, inhibit the learning process for many law students, especially those who are women, people of color, students with disabilities, and generally, students who do not view the world in the same adversarial fashion. Conquest is not the endpoint for many students.

Being historically in the minority means that women, people of color, people with disabilities, or those who are lesbian or gay, have unique perspectives as outsiders. People not in the mainstream often think more about how the law *could* or *should* be used to facilitate change. Constructing a new or different vision requires recognition of those different perspectives. To see and understand the world beyond your own lenses should be a primary goal for every law school classroom. Perspective also demands that we look at our history to understand our present.

Let me take you back to the time of the first woman faculty member at the UWLS. Any discussion of women in our law school must include our first woman faculty member, Marian Gould Gallagher. Gallagher graduated from law school in 1937. Because she had such limited job opportunities, then-law librarian Arthur Beardsley encouraged her to pursue librarianship. She took that charge with great ambition and enthusiasm. She quickly became one of the most respected members of the national law library community. Subsequently, her reputation grew among her male colleagues, first on the faculty and then in law schools and bar circles, both locally and nationally. The impact of Marion Gould Gallagher on law students cannot be overstated. She was a role model for the then still very small number of women law students, and all of the male law students. For many she was the first woman of authority they had seen in higher education. Gallagher stood as an intellectual peer with her faculty colleagues as a teacher and scholar.¹⁵ When we see people like ourselves, many of us are inspired to believe that we too can reach similar plateaus of success in our lives. If those role models are really good, like Marion Gallagher, they set a standard for others to seek with similar integrity and humanity.¹⁶

¹⁵ The first female tenure track faculty member who was not a librarian was Marjorie Rombauer, who joined the UWLS faculty in 1960.

¹⁶ Perhaps this type of early role-modeling explains why the Honorable Betty Fletcher of the U.S. Circuit Court of Appeals for the Ninth Circuit, a 1956 UWLS graduate, became the first named partner of a major Seattle law firm; or, why four of the nine justices on the Washington State Supreme Court are women (and five of the nine are UWLS alumni); or, why both U.S. Senators from the state and the governor, are women.

As I prepared for this talk, it dawned on me that I could gain additional perspective by talking with my faculty colleague who led our gender study, Professor Deborah Maranville, a graduate of the Harvard Law School. To get a better understanding of how things have changed, I interviewed Maranville about her experiences at HLS. She noted that her class was the first to have women in a double-figure percentage (14.5% in 1972). Professor Maranville also reflected upon the fact that because her section had a disproportionate number of that 14.5%, her section was 25% women. With that number, she observed that women did not bond as much as perhaps those in the other sections. Although she did not know about the performance of women classmates in law school, it seemed a safe assumption that most ended up with quite successful careers.¹⁷

Professor Maranville noted that her section's bonding took place nearly a decade later during a class reunion where many of their professional stories became known. In discussing their various experiences, she noted the complexity of their professional lives and their personal growth and development during the journey. She suggested that the next generation of gender studies should focus on the experiences of women ten or twenty years removed from law school.

In thinking about law school, she opined that we should look at the traditional indicators of success and rethink them. She urged that law school should broaden the teaching methodology by introducing human complexity into discussions about law—to discuss the importance of balance and communicate that legal education is about a process. I walked away from our conversation with a sense that we need to emphasize the critical importance of community. Creating a sense of community permits us to value each other, to help when help is needed, and to encourage each other when that is warranted.

I am proud to report that the results of our gender study revealed that we were a bit more successful in reducing obstacles to women succeeding while students than several other law schools.¹⁸ Women tend to fare slightly better in several areas including academic performance, self-perception, assuming leadership roles within the school, and, most importantly, in expressing their overall satisfaction with their legal education.¹⁹

¹⁷ Without any difficulty at recall, Maranville noted the following among her classmates: Professor Patricia Williams, Columbia Law School; Professor Nadine Strossen, New York Law School and president of the ACLU; Jamie Gorelick, partner at WilmerHale in Washington, D.C., and former Deputy Attorney General of the United States; Jamieenne Studley, president of Skidmore College; and Kari Glover, managing partner of Preston, Gates & Ellis, the second-largest law firm in Seattle.

¹⁸ The study also revealed that we still have more to do to strengthen our learning environment. For example, by the third year of law school, one-fifth of women and men students reported instances of perceived unfair treatment based on gender. For a full copy of the report, see LAW WOMEN'S CAUCUS, *THE GENDERED EXPERIENCE: BEING A FEMALE LAW STUDENT AT THE UW SCHOOL OF LAW* (2005), <http://www.law.washington.edu/lwc/genderStudyReport.html>.

¹⁹ The study revealed that women students were less comfortable than men with the

Overall, it seems we have done a slightly better job than other schools in promoting and encouraging women in the profession here in Seattle than in other law schools around the country. Part of the explanation for this fact lies in the modeling history we have created.

Leadership

Leadership is the key to motivating people and institutions to accomplish great things. The legal profession is a cornerstone in any societal effort to advance equality. But to begin that task, we must first get our own house in order. How do we increase the percentage of women at legal educational institutions and within the legal profession? How do we get women to assume more leadership responsibility while in school and once in practice? Even though we have exemplified some success at the UWLS, I quickly note that one key to continued success is resisting the temptation to rest on the laurels of today's progress and relatively good news. We must constantly consider and re-consider how our school can go about mentoring women in law school. To facilitate effective mentoring women obviously need to see, meet, and know women who are role models.

An obvious recommendation for achieving this goal is to bring more women on board as faculty members and administrators. From 2001 to 2005, three of our faculty associates or assistant deans were women. In addition, two of our three professional staff members who were assistant deans were women. Just as UWLS law students saw more women in the student body and in administrative posts, it is equally important for all to see more women in the classrooms. While we have not yet achieved the same type of results as we have with students and staff, our numbers for women faculty show that we are making progress. With the addition of another faculty colleague this fall, women will total forty percent of the faculty. Progress, slowly but surely.

Legal institutions are evolutionary in their development, moving ever so slowly to new levels of achievement. Though I still believe that we will be able to increase the number of women faculty to points that more closely resemble the percentage of women in society over time, it will take time, focus, and leadership. When I speak of the leadership component of VPLP, I mean to suggest that those of us who serve as deans and leaders in the profession occupy positions of influence. We must be accelerants to this evolutionary process and, in some instances, even act as revolutionaries.

True leaders emphasize core principles and core values for their institutions. Leadership demands that we help both to set and to drive an agenda that pushes gender opportunity. In this regard, repetition is criti-

cal. At every opportunity, we must underscore the value that women bring to the study and practice of law. We need to emphasize gender in a contextual manner, urging colleagues to think about gender signals in their teaching. All of us have to develop a sense of responsibility for all of the members of our academic community. The word “community” implies a sense of commitment to something greater than your personal agenda. It means talking about core values and working to make those values a part of the lived experience in an institution.

Decanal leadership requires us to urge our schools to think and to act in new and different ways with respect to the law school curriculum. We must encourage a broad view—going beyond the doctrinal teachings of a particular course or subject to ask about the type of professional we should be seeking to help create through our teaching. Mantra-like repetition of that message is crucial for legal institutions because they are historically resistant to change. Decanal leadership also demands that we engage with the profession, exhorting our colleagues to take just as expansive a view of their role in addressing gender disparity.

As I noted earlier, I also believe that on occasion, leadership demands more revolutionary efforts. There are times when resort to “guerilla tactics” becomes necessary, where we blow up convention.

For one last example, allow me to describe the historic hiring patterns at most law schools. Most faculties reproduce themselves—looking for people of like mind and background. Historically, our first effort to diversify the gender makeup of law school faculties resulted in bringing many women to faculties in non-tenure track posts. Most faculty codes provide multiple classifications for faculty. At the UWLS, we have used those multiple classifications to make hiring decisions less of an all-or-nothing proposition. My law school has hired nine women faculty members during the past four years. Of these nine hires, seven have been tenured or on the tenure track. Nine of the fourteen men hired during the same period were brought on board in positions without tenure. To encourage change and promote greater gender representation in higher education, you must find ways of incorporating women into the faculty of your institution, whatever it takes. You need to recognize the importance of seeking a balance among the choir of voices on a faculty. By hiring women in predominantly tenure track or tenured positions while hiring men outside this classification, we have helped to create more balance in the educational structure of our institution. Vision, perspective, and leadership.

When we think more broadly about the legal profession, other tactics may also be necessary. Our experience has revealed that slightly more women than men enter law school committed to public interest work after graduation. NALP suggests that, statistically, most law school graduates do not end up undertaking public service work. The reality is that

roughly six to eight percent of all law school graduates end up in careers typically defined as public service positions.²⁰ One of the challenges to increasing the number of graduates going into this work has much to do with image and money. Here again, law schools can lead. At the University of Washington, we emphasize public service tremendously.

We do not, as a society, value public service work because we do not put our money into it. We do not put our individual dollars into organizations that are public service oriented, and we do not commit our time to such organizations. Until we begin, as a national community, to talk differently about these opportunities, it will be difficult for students interested in public service to enter this field. Indeed, they do not hire significant numbers of graduates each year to work at the NAACP Legal Defense Fund. They hire significantly more to work at Cravath, Swaine & Moore, LLP. For those of you exiting law school with upwards of \$100,000 worth of debt, your financial burden will create a challenge. Maybe the best form of public service would be for law school graduates to be elected and to change the political structure of this country!

Last December, the UWLS received a magnificent gift of \$33.3 million from the Bill and Melinda Gates Foundation to enable us to enroll students committed to public service work after graduation. For those selected to be Gates Public Service Scholars, this magnificent gift eliminates the terrible dilemma that some students face in having to choose a high-paying private sector positions in order to pay the sizable loan debt associated with their attending law school. In reflecting on this scholarship program, and on the public service area more generally, I believe that our leadership in making public interest a consistent message and key component of our school's mission had some small role in the creation of this gift. In our case, a corollary benefit has been the fact that there is also a slight gender difference between women and men seeking to go into public service. At our school, slightly more women than men express an interest in practicing in the public sector. Thus, our message of commitment might have also had something to do with the number of women who attend our school.

Persistence

I believe that persistence is the only way to ensure real change in anything takes place. If gender equity is to remain important, those of us in the profession bear the ultimate responsibility for continuing the dialogue and for refocusing the discourse whenever necessary.

²⁰ NALP JOBS AND JDs, INITIAL EMPLOYMENT BY TYPE OF EMPLOYER, CLASS OF 2004 (2005), http://www.nalp.org/assets/160_selectedfindings04.pdf (showing 2004 graduates in 56.2% private practice; 12.0% business and industry; 10.5% government; 11.1% judicial clerkships; 4.9% public interest; 2.0% academic careers; 1.2% military).

My last example is that of Paula Boggs, general counsel of the Starbucks Corporation. Although not a UWLS alumna, she is someone who embodies persistence, leadership, vision, and perspective. She is one of only three African American women who serve as general counsel in a Fortune 500 company. Now, Starbucks is a big and very successful company with lots of firms eager to provide legal counsel to the company. What Paula has done with respect to race and gender is what we must all do—demand accountability. Paula actually calls the law firms that work on Starbucks' legal work and she inquires about the lawyers working on those projects. She demands that people of color and women are involved in the actual legal work being done for the company. It is one thing to recite the number of women or people of color employed by a firm, it is an entirely different matter to detail the identity of those who are actually working on the company's legal matters. Ms. Boggs exemplifies how initiating change must start at the top, be communicated throughout, and repeated, consistently and persistently. We can learn a lot from a coffee company.

If we want to ignite change with respect to gender representation, women in positions of power are going to have to demand the involvement of other women, and both women and men must hold ourselves responsible for the results. Those of us who have small, bully pulpits as deans, must similarly speak about these issues, and make similar demands for gender equity. We must institutionalize women's concerns and act to address them in school and in the workplace. We must be willing to experiment with new models of work that, for example, permit women wishing to start families, to continue to practice with equal vigor. It is this dialogue, and a commitment to improve matters that will inspire change. I sincerely hope that the work we are doing currently at the University of Washington, and the work that you are doing here at this conference, will allow us all to realize gender equity in legal educational institutions and the legal profession much more quickly. Thank you.

DEAN KATHERINE BARTLETT, DUKE LAW SCHOOL

After more than two decades of collecting empirical data about how much, and in what ways, women are disadvantaged in the competition to succeed in law school, it is time for schools to share their experiences with concrete measures that might have an impact on eliminating this disadvantage. In that spirit, I want to describe two developing initiatives at Duke Law School that seem to have some promise for improving the institutional culture for women. Both of these initiatives are driven by Duke's efforts to improve how we train *all* students, rather than by a more specific purpose of improving the culture for any particular sub-group. Guided by a fully inclusive vision of educational quality, however, measures to improve the general quality of an institution should be expected to

be particularly beneficial to those who previously were not fully included. I choose two very different initiatives to discuss how this might be so.

Institutional Climate: The Duke Blueprint

The Duke Blueprint²¹ is a statement of core principles that express Duke Law School's personal and professional development goals for its students beyond the analytical training students obtain traditionally in classroom education. There is nothing unique about these goals: engage intellectually, embody integrity, lead effectively, build relationships, serve the community practice professionalism, and live with purpose. Indeed, stated as generalities, Blueprint principles are only platitudes. The Duke Blueprint, however, entails a comprehensive program to define these principles and then reinforce them by continuously giving them concrete meaning, relevance, and application.

As with other aspirational principles, Blueprint goals are not ones to be simply memorized or recited. Until they are internalized—taken for granted, an invisible part of one's identity—they make no appreciable difference in one's life. To achieve this invisibility, Duke's approach has been to soak the culture with highly *visible* messages. Repetition and application are critically important to the success of the Blueprint. Principles are reinforced and put into action at virtually every institutional opportunity—1L orientation, leadership retreats, career services events, and pro bono programming—and in everyday responses to student initiative and self-government. At the same time, the Blueprint is advanced not for its morally facile answers—thou shalt not cheat or lie; thou shalt do pro bono work; thou shalt act ethically at all times—but rather as vocabulary for working through complex issues of community, value conflict, personal interactions, and career planning. Highly creative and sophisticated tools are used to focus student thinking and action on what it means for someone to make a difference, to be an effective leader, to find personal and professional fulfillment, to define an effective vision, and the like. These tools include self-study instruments, role-plays, and other dynamic exercises and projects designed to help students to develop self-knowledge and leadership qualities. Other reinforcement provided are student and faculty prizes that reward Blueprint goals, such as the student Blueprint prize for mentorship, and the faculty Blueprint prize for the faculty member who does the most to make other faculty members more productive.

Alumni at law firms tell us often that students from the top law schools, though terrific thinkers who can perform research and legal analysis, often do not bring to the job the fuller package of professional skills and attitudes required to operate at the highest level. Trained to compete, gradu-

²¹ DUKE LAW SCHOOL, DUKE BLUEPRINT: LAWYER EDUCATION AND DEVELOPMENT, <http://www.law.duke.edu/studentAffairs/blueprint/blueprint.pdf> (last visited on May 26, 2006).

ates of elite law schools, it is said, too often try to show each other up, rather than bring out the best in one another. Associates often do not function well in teams, think institutionally, value loyalty to the firm, or demonstrate commitment to the legal profession. The Blueprint evolved in part out of recognition of the need for young lawyers to appreciate and develop these qualities in the context of greater professional effectiveness and community membership.

Another external factor addressed by the Blueprint is unhappiness and the lack of a sense of personal fulfillment within the legal profession. One study reports that lawyers are 3.6 times more likely to be depressed than the average among 104 occupational groups—the highest of any profession—with a nineteen percent incidence of major depressive disorder.²² Only twenty-seven percent of lawyers in a study by the ABA reported that they are “very satisfied” professionally.²³ The Blueprint approaches the problem of morale in the profession by encouraging students to be more self-reflective, to take advantage of opportunities to identify their own values, working styles, and lifestyle expectations, and to consider career paths and professional commitments that will be rewarding to them in light of these characteristics. It should go without saying, yet must often be said, that when students are affirmed in goals and values they have deliberately chosen, rather than those derived from external (potentially alien) professional pyramids, they are able to develop personal agency, and a satisfying career path that is aligned with their value system.

The one-page Duke Blueprint is revised, annually, with input from student leaders. The discussions each year about the content of the Blueprint become one of many occasions for engaging students about their values and the values of the institution—what it means, for example, to embody integrity, or to transform controversy and conflict at the law school into opportunities to work creatively with others for the benefit of the community. How do we know when it is working? We think it is when students’ first impulse in reacting to an issue they see as a problem is not to come whining to the Dean’s Office, but to work with others to develop a constructive proposal to improve the situation. We think it is when we see students organizations collaborate effectively toward common goals (as

²² Andy Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J.L. & PSYCHIATRY 233 (1990); Anthony Eaton & Garrison Mandel, *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079 (1990). Law school itself appears to be a contributing factor. A study by Kennon Sheldon and Lawrence Krieger determined that students enter law school with normal levels of self-determined motivation and satisfaction, but over time during law school, experience shifts from intrinsic motives and values toward more extrinsic ones, and large declines in positive affect and life-satisfaction. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. LAW 261 (2004).

²³ See AMERICAN BAR ASSOCIATION, YOUNG LAWYERS DIVISION SURVEY: CAREER SATISFACTION 18 (2000), http://www.abanet.org/yld/satisfaction_800.doc.

members of different Harvard journals have with this conference), rather than approach their projects competitively. We think it is working when student leaders place a priority on cultivating their successors, when members of community begin to define their own success in terms of goals larger than themselves, when we see less clustering among student affinity groups, and when student mentoring becomes one of the most valued extra-curricular activities at the school.

While I would not claim that the culture at Duke is unique, since the Blueprint was initially introduced three years ago we have noticed within the community a general improvement in morale, an increase in goodwill, a greater expectation of constructive, collaborative problem-solving, and an intensification of collaboration between students and faculty. The Blueprint has achieved an unexpected level of traction among both students and faculty, which has further reinforced its importance and impact. Faculty and students both seem to understand and appreciate the relationship between the Blueprint and the extraordinary culture of leadership at Duke, and its beneficial impact on their own working climate, and thus they take steps to further it. The Blueprint has enhanced faculty recognition of the importance in lawyer education to close professional mentoring relationships with students. Most recently, this recognition led the faculty to commit in its five-year strategic plan to multiplying the number of "capstone" experiences for third-year students to work intensively with a faculty member on a project designed to bridge law school and the world of legal practice. The importance of collegiality is taken seriously into account in the faculty hiring process. Students also seem to appreciate that a close community, which it is in their power to help create, not only makes for a more enjoyable law school experience, but one in which they can better learn to be effective lawyers.

The emphasis on relationships, community, and institutional commitment may be associated with a female voice and may, for that reason, explain why women feel valued and included within the Blueprint community. Any such effects, however, come from an effort to improve the culture for all, as a component in the professional development of each student, rather than from as a commitment to a specific subset of the community. This broader rationale has helped to increase the acceptance of the Blueprint, and thus its effectiveness as a factor for institutional change.

Video-pedagogy

Much of the long-standing critique of law school climate has been directed toward classroom pedagogy that is said to alienate students, especially women and minorities, and to undermine their ability to succeed academically. Several years ago Duke began heavily investing in video technology to improve classroom instruction. This investment, I now believe,

is another factor that has potential to break down barriers to the inclusion and learning experienced by women.

Video technology can engage students in ways that traditional text-based learning does not. It develops lawyering skills that are not well-taught through traditional teaching methods, and in so doing appeals to more visual, interactive learning styles than traditional teaching tools. One example is a library of documentary films that tell the story of leading U.S. Supreme Court cases developed by Professor Thomas Metzloff. These documentaries contain interviews providing the perspectives of the different parties, witnesses, lawyers, and judges, as well as footage of the settings and background facts giving rise to the cases. In the video for *Virginia v. Black*,²⁴ for example, in the course of explaining the facts of the case from his perspective, the defendant Grand Wizard of the Ku Klux Klan explains why he had a right to burn the cross on a field he rented in Virginia, and what it was like when the only person that would represent him in his criminal prosecution was a black attorney from the ACLU. The video for *Gore v. BMW*²⁵ demonstrates the different processes used in painting a BMW in the original manufacturing process, and in retouching a car that has been damaged in the dealer's lot. Through these videos, law students have the opportunity to understand the motivation and vantage points of the individuals who were behind these historic cases, as well as the progress of a case from an episode or transaction, through the judicial system. Preliminary testing indicates that students who have viewed the videos gain a deeper understanding of both the factual and analytical aspects of the cases.

Another, particularly sophisticated use of video for teaching purposes is *The Contracts Experience*, developed by Duke Law School professors John Weistart and H. Jefferson Powell and Professor Girardeau A. Spann of Georgetown Law Center. *The Contracts Experience* is a set of DVD teaching materials for contracts that include electronic text for cases, statutes, and commentary—with hyperlinks to back-up materials students may consult—and an extensive set of videos.²⁶ Some of the videos are interviews with judges, lawyers, and legal academics, about important points of law and theory. These interview videos provide crisp commentary and points of view that are more accessible to most students, espe-

²⁴ 538 U.S. 343 (2002) (invalidating Virginia cross-burning statute as a content-based restriction on free speech). For access to the documentary, see West LegalEdCenter, http://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=2838749.

²⁵ 517 U.S. 559 (1996) (reversing denial of motion to reduce punitive damages, on the grounds that the car dealership's failure to disclose a touch-up to the original paint job was not particularly reprehensible and caused only minor economic harm). For access to the documentary, see West LegalEdCenter, http://westlegaledcenter.com/program_guide/course_detail.jsf?courseId=2839390.

²⁶ For more information about THE CONTRACTS EXPERIENCE (Horizon Productions 2002), see Multimedia Contracts Course DVD, http://www.law.duke.edu/features/news_multimedia_contracts.html. Sample videos are available at <http://www.horizonvp.com/VideoTest01.html>.

cially those with visual learning styles. They also bring to the surface various points of view that students might not feel safe or comfortable in raising themselves, thereby giving permission for a more frank and inclusive discussion.

Other videos are vignettes that enact the facts of the assigned cases. These vignettes bring the students into cases as observers, attorneys, jurors, trial judges, and appellate judges. They reveal features—for example, tone of voice and body language, race, or economic circumstances of the parties, further conversational and observational detail—that affect the way a student views the case, thereby providing an opportunity for the student to examine the otherwise unstated assumptions she may have brought to her first reading of the case. Comparisons of alternative video enactments that are equally faithful to the facts of a reported, appellate case, not only change the facts to test legal rules and analyses (as do traditional classroom hypotheticals), but they also challenge students themselves, rather than the appellate court of the professor, to isolate and articulate the relevant facts. Through this process, students begin to appreciate the elusive quality of a “fact,” including the distance between what may have *actually* happened, how the facts are portrayed in an appellate statement of the case, and the lawyer’s role—with all of its ethical complexity—along the way.

For those who find more traditional teaching methods too abstract and alienating, who seem to be disproportionately women, video technologies make classroom learning more accessible and inclusive. Further, some of the vignettes effectively reveal the significance of gender and race in everyday discourse, and within legal practice (as did a sample I showed live at the conference, which was an exchange between a female lawyer and a male client). While more scientific research would be necessary to prove this point, professors who use these video materials report that women are at least as engaged as men in the classes in which they are used.

How do the Duke Blueprint and the video experiments relate to the larger question of climate issues at U.S. law schools? Lani Guinier and Susan Sturm have analogized the position of women and minorities in traditional education settings as the miners’ canary.²⁷ I agree that some of the alienation experienced by certain identified sub-groups of students in law school is symptomatic of larger pedagogical and climate issues. Taken seriously, the “canary in the mine” metaphor suggests that there is great diagnostic value in the studies showing that women do not thrive to the extent men do, at least by some measures. Only by attacking the toxic fumes in the entire mine, however, will deeper, more enduring reform be possible. I hope the two examples I have described give a sense of the great range of possibilities there may be for cleaning out the whole mine.

²⁷ Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953 (1996).

It is crucial, of course, that whoever is defining the broader problems to which broader solutions are sought is truly attuned to the interests of those now least served; otherwise reforms will simply reinforce existing patterns of privilege. To this end, the impact of legal education reforms on women should continue to be closely monitored. In the continued research ahead, my own experience suggests two reasonable hypotheses: (1) efforts to train students to be well-rounded, collaborative, team players, who measure success in terms other than individual gain, will improve the well-being and quality of lawyers, with particularly salutary effects on women who, studies seem to show, are disproportionately alienated by the more individualistic, traditional model of legal education; and (2) legal pedagogies that use richer, visual contexts to explore issues of fact, perspective, and value will also both contribute to the training of better lawyers, and help to reduce the gap now measured between male and female law student performance.

Much of the conceptualization and empirical diagnosis of the problem has been done. Now is the time for experimentation with possible solutions, and testing to determine impact. I have spoken of only two measures—one classroom-focused, the other more specifically aimed at community culture. A multitude of other measures, big and small, have been undertaken at Duke and at most other law schools. Some of these are aimed specifically at populations like women, who are disproportionately alienated by the traditional law school environment; others, like the two examples I have given here, and like the curriculum reform at Vanderbilt Law School described by Dean Edward Rubin, bring an inclusive vision to the more general task of improving legal education for all. I sense greater interest in these issues than ever before, both in the legal profession and in law schools. It is time to experiment further and see what works.