

GENDER BIAS IN THE CLASSROOM

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I. INTRODUCTION

After listening to the three other speakers, I suppose I am here to answer the question: "Is all of this really important?" I am here to provide empirical data to support the claims of the previous speakers.

I think we tend to forget that until 1950, Harvard, the most prestigious law school, did not admit women, and other law schools admitted few women.¹ In 1969, one year after I graduated from law school, women comprised only 7% of all students in ABA-approved law schools.² A study of thirty-five women at a small southwestern law school during that period found that women in many ways during the late 1960s and early 1970s behaved like members of other minority groups.³ They tended to ghettoize themselves, forming patterns of physical separation. In particular, those women tended to sit together in the class.⁴ The researcher, Alice Jacobs, concluded that the women surveyed viewed themselves as members of a minority group and believed that others also viewed them that way.⁵ Jacobs, writing in 1972, concluded that women learn how to communicate to others as women and often are negatively sanctioned by society and peers for unfeminine behavior.⁶ Women in law school, to succeed, are too often expected to adopt male preferred modes of communication and behavior.

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1. See generally, K.B. MORELLO, *THE INVISIBLE BAR* 39-107 (1986). Although Harvard is often cited as being among the last to admit women, Washington & Lee still barred women as late as 1972, twenty-two years after Harvard Law School admitted its first woman student. Goldberg, *Then and Now: 75 Years of Change*, 76 A.B.A.J. 56 (1990).

2. AMERICAN BAR ASSOCIATION, *A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES FALL 1987 66* (1988).

3. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972).

4. *Id.* at 467.

5. *Id.* at 467-68.

6. *Id.* at 471. Jacobs also observed that women volunteered and were chosen less often than men. *Id.* at 470.

My study was conducted more than fifteen years later. The number of women have increased dramatically since 1969. For example, in 1988-89, women comprised 42% of all students in ABA-approved law schools.⁷ Despite the significant increases in the past fifteen years, many women still feel as though they are "strangers in a strange land." They perceive American law schools as androcentric, white, upper-middle class domains. Today's women may have equal access to legal education, but they do not necessarily receive an equal legal education. It is almost as though we are admitted to law school, but denied the use of a bathroom—or perhaps the law library.

My original study looked at five law schools.⁸ The data I am going to talk about today is data I collected over the past three years and includes those five schools. It consists of in-class surveys administered at fourteen law schools during the 1987-88 and 1988-89 academic year. Four of the schools were private; ten schools were public; four schools were located in the East; two in the West; none in California or Chicago; four were southern or southwestern schools, and four were north-central schools. My sample consists of approximately 1,930 responses from first- through third-year students. Approximately 60% of respondents were men and 40% were women. In the latest compilation, approximately 14% of the respondents were people of color.⁹ Though we are talking about women here, almost everything said at this symposium about exclusion of women must also be said about people of color—and it goes doubly for women of color—a point I'll address at the end.

For those of you who are interested in statistics, chi-square statistical tests were used to test the differences among men and women. For each of the variables reported as statistically significant, I used the .01 level or beyond as a measure. If you know anything about statistics, generally .05 is considered statistically significant. So I am not talking about marginal significance. Further, most of the statistically significant findings have a .001 or greater level of significance.

In addition to those in-class surveys, last spring we conducted taped, in-depth interviews with a sub-sample of students at my former

7. AMERICAN BAR ASSOCIATION, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES FALL 1988 66 (1989) [hereinafter A REVIEW OF LEGAL EDUCATION FALL 1988].

8. Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988).

9. Minorities currently comprise only 11.8% of all students in American Bar Association (ABA) approved law schools. A REVIEW OF LEGAL EDUCATION FALL 1988, *supra* note 7, at 68.

institution. We did that as part of a pilot study. I plan to conduct more interviews at other law schools. We need to talk to students because the in-class survey results raised a lot of questions and left others unanswered.

II. THE STUDY RESULTS: WOMEN'S PERCEPTIONS OF THE LAW SCHOOL CLASSROOM

In my study, I found that more women than men perceive the law school classroom as alienating and hostile. Why? There are several explanations, including lack of encouragement or actual discouragement by the professor, hostility from male students, and the law school environment in general.

A. The Importance of Encouragement

In 1984, Bernice Sandler and Roberta Hall published a study on the classroom climate at undergraduate institutions.¹⁰ Their study gave me the idea for my study of law schools.

Let me tell you a little story that Bernice Sandler told last summer at the Association of American Law Schools (AALS) Section on Contracts teacher's conference. Bernice talked about a longitudinal study of male and female high school valedictorians. All of the valedictorians were asked the same question—first, at the end of their last year of high school, then at the end of their first year in college, and lastly, at the end of their fourth year in college. That question was, "Do you consider yourself smarter than your classmates?"

At the end of high school, almost an equal number of male and female valedictorians said "yes," approximately 30%. At the end of the first year of college, approximately 25% of the men and only 11% of the women said "yes." At the end of the fourth year of college, approximately one third of the men said "yes," but none of the women said "yes." Assuming undergraduate education similarly affects most women, the bright women we see entering law school today are the survivors who survived in a large part without their self-esteem, or certainly with a withered self-esteem.

So perhaps it is more important that we are encouraging to women. But women are not the only students who need encourage-

10. Hall & Sandler, *The Classroom Climate: A Chilly One for Women?*, Project on the Status and Education of Women (Washington, D.C. 1984).

ment. I talk to a lot of men from working class backgrounds who feel just as alienated by this androcentric, upper-middle class environment as women and people of color. I think we fail to realize that the law school of today is much more diverse than it was twenty or thirty years ago. It is more diverse with regard to class, gender, and color. Yet we still continue to teach in the same way we taught almost 100 years ago though we are teaching different people. The question raised by some of the responses and perceptions from the student surveys is whether we are doing an effective job of educating, our alleged aim in law school. If we are not encouraging maximum performance by the bulk of the people in the classrooms, then we really are not educating.

B. Students Report Lack of Encouragement

My expanded study supports the findings of my earlier study that more women than men believe that their professors did not encourage them.¹¹ They also say that the professors perhaps neither encourage nor discourage them.¹² Second, women reported less voluntary class participation than men.¹³ Also, their level of voluntary class participation decreases over time.¹⁴ Think back to your first year of law school, think about how many women talked in class. Who do you think spoke most in class? What is interesting is that most men and women say that men speak more than women, but men are more likely to report that both speak equally. However, few students say that women speak more often than men. Yet this is certainly a possibility as we approach 50-50 in terms of classroom composition—especially since one of the stereotypical images of women is that we are always talking.

When I first started teaching in law school, there were few women in the classroom. All of a sudden I realized that at least one-third of the students in my class were women. I became interested in the silence of women because I did not hear them speak in class very often. I noticed that even the women who spoke in the first year did not voluntarily participate by the time I got them in an advanced third-year class. Then I tried looking at women who were

11. Banks, *supra* note 8, at 143. The difference in the initial study was not statistically significant but in the expanded study had a significance rate for white women of .04.

12. *Id.* Once more white women are more likely to report this perception.

13. *Id.* at 141.

14. *Id.* at 142.

speaking the first year. I found that the women who volunteered most often in the first year were the older women. However, by the third year, I found that these women were the most silent. This was intuition, but the empirical data I collected tends to support this observation. The women who report voluntary participation most in the first year are the ones who speak least by the third year.

C. Discouraging Behavior by Professors

Students in every school surveyed also reported that some professors still continue to make offensive comments in the classroom. I used the term "offensive comments" on purpose because I wanted students to tell me what kinds of comments, questions or humor they found offensive. The overwhelming number of examples given by students were sexist comments. Let me give you some examples. In a course on Law and Psychiatry, the professor said, "Women make love to get advanced or to hurt someone, but men make love for love."¹⁵

I believe someone earlier was talking about a conversation he had with someone else when the person used the term "bitch." "Bitch" must be a favorite word used for women in law school. Almost every school reported at least one professor who, in the classroom, used the term "bitch" to refer to women. Students at my former institution said, during a discussion on this topic, that the Women's Law Caucus members are called "Law Bitches" by male law students. Students at another school reported that one professor in a course on family law, during a discussion of a case involving alimony said, "When you sleep with a bitch, you get fleas."¹⁶

One of the comments I cited in my article and the one I think surprises most people is: "The professor drew a large circle around the title of the subject matter of the day's lesson that he'd written on the board. When class began, he said, 'Pretend this is a large breast.'"¹⁷ Well, I reported this during a presentation at my former institution. The very next day a professor who taught the same section I taught walked into class, put two dots on the board, drew a circle around each dot, turned around to the class, and laughed. His actions consciously demeaned me, a colleague and woman of

15. *Id.*

16. *Id.* at 144.

17. *Id.*

color. His actions also alienated many women and some men in the class.

A teacher's behavior in the classroom can alienate students and impair learning. More women than men reported that professors lack respect for their comments or responses to questions.¹⁸ This lack of respect can be expressed in nonverbal ways. The behavior I am about to describe is not behavior limited to men. Those of us in the profession, myself included, made it through law school and on to law faculties. In the process we have unconsciously adopted a lot of negative behavior. All of us need to think about how we teach.

How many times has a woman raised her hand and said, "I . . . I . . . don't know if this is right, but I remember when I was working for so and so . . ." and proceeded to tell a story. You stand there and either your eyes glaze over, or you interrupt. Or when she completes her story, which often is completely relevant, you restate in the male-preferred, abstract language, the idea she conveyed. Or you do not make eye contact at all, but look someplace else, or you doodle. You may sit there and say, "When is this person going to finish?" Your nonverbal behavior sends a message, a negative message, to the student.

Even when the student gives the correct response, but perhaps not quite in the way you wanted, you may give a negative response. Perhaps the student responds in a narrative mode, or the student prefaces the remark by explaining how she feels. Too often we encourage students to pretend that the people we read about in the cases are not real and that law students should not be concerned about what happens to them. The professor moves on to another student who gives the answer in the male-preferred method, and we say: "Wonderful! Right on point." We often give the positive response, the encouragement to the male or to the woman who recites the information in the male-preferred way.

There are positive and negative ways law teachers send messages to students which can encourage or discourage class participation. Unfortunately, we all engage in some form of discouraging behavior. For example, I really find it very difficult not to let my eyes glaze over when a student, male or female, starts talking and goes on ad nauseam. I sit and think: "Pretend you're interested. Don't let them know that this is boring you to death. Try to find *something* good to say about this comment." We must find ways to encourage

18. *Id.* at 143.

students to participate in class, even if they are wrong. To me the worst thing is for a student not to know that she or he is on the wrong track until she or he gets the grade for the course.

One common complaint about law teachers, of which I am guilty, is interrupting students. When you look at who gets interrupted most often, it is women or men who talk like women. The men in class who talk like women are those who talk about their experiences, or how they feel. We also tend to interrupt students who are idealists, who always want to talk about another approach that is not in the textbooks, or not in the professor's notes. An article recently published by a third-year law student recounts a class where a female law student repeatedly brought up nontraditional approaches to the problems discussed in class.¹⁹ Students were initially very supportive because her comments made the class interesting. They were refreshing and caused students to think about concepts in different ways. The professor kept sending negative messages to the student. By the second and third years, students knew better than to make those kinds of comments.

D. Hostility From Male Students

A second problem that you have in law school and in the classrooms is the hostility of male students to female students or to male students who talk like female students. This has a negative effect on the classroom. Oftentimes it is hard for law teachers to deal with this problem, especially women law teachers.

A common assumption is that older men tend to be more sexist. However, the surveys and interviews suggest that the males who are most sexist are not the older men, who perhaps are more secure about their sexuality, but are the men 25 and under. The younger males, according to the survey comments, make hostile statements about women and women law professors.²⁰

I think it is important that we have programs like this that are well attended by men, that are sanctioned and encouraged by male law professors who serve as role models for the appropriate behavior in law school. It is important that these young men understand sexist behavior is unacceptable.

19. Matthews, *Sketches for a New Law School*, 40 HASTINGS L.J. 1095, 1097-8 (1989).

20. See, e.g., Banks, *supra* note 8, at 145; Weiss & Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1324-26 (1988).

E. The Law School Environment in General

The silence of women in the classroom is a manifestation of the degree of alienation of law students in general. One of the most surprising things I found in my earlier study is that 40% of third-year students report that they never volunteer in class by the time they get to the third year. That is an incredibly high number of people and is extremely distressing. It means that we are doing something wrong.

Obviously, the law classroom is silencing not only to women, but to others as well. This means that there is a great deal of dissatisfaction with legal education today. The women we interviewed identified the large classrooms and the competitive nature of the law school classroom as things they most disliked about law school. Large classrooms foster a sense of isolation and alienation. Not surprisingly, people of color also report feeling terribly alienated by being in large classes, especially when there are so few people of color in most law schools. The competitive nature of the classroom is also very inhibiting. Repeatedly the women we interviewed last spring said: "The classroom environment is not supportive. It is very competitive. I find it alienating. I refuse to participate in this cannibalistic kind of process."

This raises questions about the law school culture in general because of the extent and degree to which we allow and even encourage unhealthy competition. I am not saying that law students should not be competitive, but some competition is unhealthy. Many students who do not make the law review by the end of their first year are turned off by law school. They are marking their time until they can graduate and get a job. First-year grades often determine who gets the prestigious or well-paying jobs. The late bloomer or outsider unfamiliar with the law school process is penalized. We seldom reward improved performance in law school. So the first year, the year when the most support is needed, is the year students receive the least amount from classmates and little encouragement from law teachers if students do not speak their language.

Sexism in law school is damaging to both men and women. From the survey, we tried to determine the extent sexism affects the rates of voluntary participation. I thought that all women would say that it is a factor. I found that the men who are sensitive to these issues are more likely than women to report being offended by overt sexist comments and remarks. Maybe it is because the women already have been silenced. Sexism in law classrooms is damaging because it reinforces stereotypical notions about women's roles and attitudes

toward women, attitudes which law graduates then carry out into the real world. Lawyers are the people responsible for making and administering the laws, and for providing legal representation. If law graduates leave school with these skewed notions about people, how can we expect the administration of the legal system to be fair and equitable? Law schools have an affirmative obligation to sensitize law students and law professors to the continuing vestiges of sexism.

III. PERSPECTIVES OF HISPANIC AND AFRICAN AMERICAN STUDENTS

As I indicated at the outset, I believe that students of color share with women some of the negative perceptions about law school. My current project looks at the perceptions of Hispanic American and African American students about law school to determine the extent and degrees to which their perceptions are similar to perceptions of women.²¹ Most of the women in my initial study were white. But with a larger sample, we now have significant numbers of women and men of color. In this survey, we exclude white women and use white men as the norm because law schools initially were designed to educate white males. We compare people of color with white males.

Our results indicate that white males' perceptions in the classroom are not shared by people of color. Although people of color do not hold monolithic perceptions of their professors, they did collectively differ from white men in important ways. First, people of color are more likely to perceive that very few of their professors respect their questions and comments.²² Some social science studies of students tend to suggest that many people of color leave school with withered self-images.²³ So successful people of color may be entering law school much like the women high school valedictorians. They may have done well in school, but do not feel good about themselves vis-à-vis others, and may need more encouragement than others, particularly white, middle class men.

21. Banks & Blocker, *African-American and Hispanic American Student Perceptions of the Law School Classroom: Setting a Research Agenda*, (unpublished manuscript on file with author).

22. *Id.* at 8. The survey found 17.1% white males perceived respect from very few professors, compared to 31.4% African-American and 33.3% Hispanic-Americans [$\chi^2 = 30.02$ $df = 6$ $p < .0001$ $n = 1142$].

23. See, e.g., Drury, *Black Self-Esteem and Desegregated Schools*, 53 *Soc. OF EDUC.* 88 (1980) (high school).

Second, African Americans are more likely to perceive that professors embarrass or put-down students, and use offensive humor in class.²⁴ This pattern of responses suggests that the classroom is perceived as an alienating environment by students of color. Third, there were also some similarities and differences in the rates of voluntary participation. For example, Hispanic Americans are three times as likely as African Americans to report never volunteering in class.²⁵ These are students who said they really wanted to participate, but did not do so.

In our interviews last spring, a woman of color explained some of the reasons why she does not participate in class when she wants. She said that she does not participate when she feels most strongly about an issue. She feared that her emotion would take over her logic and that she would blurt out something "illogical." The example she mentioned was her criminal law class discussion of the Bernhard Goetz shooting. During this class, a point was made about the fear Goetz had of the black teenagers who approached him on the subway and the reasonableness of his fear that he was going to be mugged. This woman was the only person of color in the entire class of seventy-five students. Finally, unable to contain herself, she blurted out a response, and was surprised that her response was logical. This student's comments typify the feeling of many students that if I don't speak the correct language, I do not have the right to respond; I cannot participate because my feelings are not valid, or even if they are valid, I cannot say them in the right way. Therefore, I will say nothing. The student who is silenced this way is deprived of the opportunity to express an opinion and to have that opinion validated. Just as importantly, the students who do not hear the comment are also deprived of her perspective.

IV. CONCLUSION

Full equality in the sense of equal access to a legal education is not enough when you have educational institutions like law schools

24. Banks & Blocker, *supra* note 21, at 9-11. In the survey, 27.1% African-Americans reported professors "frequently" use offensive humor in class, compared to 18.9% Hispanic Americans and 14.6% white males. [$\chi^2 = 16.56$ df = 4 p < .005 n=453].

25. *Id.* at 12. In the survey, 23.6% Hispanic-Americans reported never volunteering in class, compared to 7.2% African-Americans and 9.2% white males [$\chi^2 = 18.60$ df = 4 p < .001 n = 1150]. However, when the two historically African-American law schools were removed, 20% of minority students compared to 9.5% of white males report never volunteering in class. [$\chi^2 = 17.6$ df = 2 p < .0001 n = 967].

that may perpetuate inequality structurally, and through messages linked to a student's gender or race, or through a curriculum which denies the perspectives of women or people of color, or treats so-called "women's issues" or "people of color issues" marginally.²⁶ While the composition of law students has changed dramatically over the last twenty years, the law school classroom is still structured to meet the needs of white upper-middle class males. The result is alienated students whose performance may be adversely affected. Law teachers' behavior in the classroom is a factor. When the teacher's classroom behavior alienates students, the law school is not doing its job.

Response by Jill E. Adams**

I am not quite sure how to respond to Professor Banks's presentation to the extent that her data is sociological. I do not have an expertise in that area and am not trained in sociological methodology. I find it interesting, however, that she finds that women report that they speak less than men report that they speak. There are observational studies on the undergraduate level that find that women are more silent in the classroom.²⁷ My first question is whether the phenomenon Professor Banks describes is something that happens in the classroom, or whether it is something involving women's perceptions of themselves because they do not realize their contributions to the class? I think it may be some of both.

I concede that there are techniques used by professors which contribute to women's silence in the classroom, particularly things like the length of time a teacher will pause before allowing a student to respond to a question. One study suggested that about five seconds was an optimal amount of time to pause to allow a student to collect thoughts and to comment.²⁸ Studies indicate that teachers rarely give

26. For a discussion of this issue, see Crenshaw, *Foreward: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT. BLACK L.J. 1 (1989); Weiss & Melling, *supra* note 20; Boyle, *Teaching Law As If Women Really Mattered, Or What About the Washroom?*, 2 CANADIAN J. WOMEN & L. 96 (1986). For a more general discussion, see CLASS RACE, AND GENDER IN AMERICAN EDUCATION 1-7 (L. Weis ed. 1988); Giroux, *Theories of Reproduction and Resistance in the New Sociology of Education: A Critical Analysis*, 53 HARV. EDUC. REV. 257 (1983).

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27. See Hall & Sandler, *supra* note 10, at 7-8 and references cited therein.

28. Rowe, *Wait-Time and Rewards as Instructional Variables, Their Influence on Language, Logic, and Fate Control*, 11 J. RES. IN SCI. TEACHING 81 (1974); see also J. LOWMAN, *MASTERING THE TECHNIQUES OF TEACHING* 135-36 (1984) (recommending a ten-second pause).

that amount of time to anyone.²⁹ Some of these studies, however, have suggested that teachers, at least in some settings, give a longer amount of time for response to male students than to female students.³⁰ I would be very interested in seeing a follow-up on the kinds of studies Professor Banks has done that tries to correlate this type of observational study to the self-reports.

It is also true that to the extent we are talking about self-esteem and a sense of empowerment, there is significance in the fact that women report themselves as participating less in class whether or not this report is substantiated by empirical evidence. If women participate as frequently as men, but view themselves as contributing to class less frequently, this is important data. If a woman, even a high-school valedictorian, reports that she is less intelligent in comparison to her classmates after four years of college than she felt upon entering college, she may also report that she does not contribute to her law school class even when she does. This lack of self-esteem may then, in fact, cause her to become more silent.

Much of what we have been talking about today is empowerment, an internalized sense that one is competent and able to perform the skills necessary to our profession. It is not a question of laying blame, or of saying that we, as women, are victimized. The theme which has echoed throughout this symposium is that we need to find a way to empower ourselves, to comment, to take full advantage of the education that is offered, to speak. Part of the methodology of law school education, particularly in the first year where many professors call on students who do not volunteer, is to emphasize and give practice in speaking. This is justified on the grounds that so much of the legal profession involves speaking. We need to be very concerned about the fact that if we, as women, speak less, then we are also failing to take advantage of the opportunity to train ourselves in the skills of our profession.

There is another theme that has struck me in the papers and comments today. We have repeatedly heard that women tend to speak in narrative rather than abstractly. We have also heard that this mode of thought is frequently discredited. There is a growing body of thought in philosophy now which talks about how our

29. Rowe, *Wait-Time: Slowing Down May Be a Way of Speeding Up!*, 37 J. TCHR. EDUC. 43 (1986).

30. See, e.g., Leder, *Teacher-Student Interaction: A Case Study*, 18 EDUC. STUD. IN MATHEMATICS 255 (1987); Gore & Roumagoux, *Wait-Time as a Variable in Sex-Related Differences During Fourth-Grade Mathematics Instruction*, 76 J. EDUC. RES. 273 (1983).

knowing is through narrative.³¹ Law is particularly about narrative: we frequently rely on the case method of instruction; to the extent that law develops through particularized cases, narrative is the method of our profession. It is the method of our common law heritage. In the creation of statutory and regulatory law, a different method is used: in determining whether a law should be enacted, we have hearings and evaluate a large body of evidence, much of which may be statistical and abstract. Case law, however, develops through individualized facts, particular facts. A case is a story about a particular conflict at a given time and place, and the law grows out of a series of these stories. A skillful advocate is one who can make his or her client the protagonist of the story. With this in mind, we should pay particular heed to the warning that when women speak in narrative, we discredit their ideas because of it. Perhaps instead we should embrace this mode of talking about the law and build upon it.

Professor Banks is making an important contribution in obtaining, evaluating and sharing the perception of women and minority students. The question we must confront as teachers and as students is one about the empowerment of students; how do we nurture a student's sense of confidence such that he or she can participate skillfully and comfortably in his or her profession?

Response by Leonard Gross***

Professor Banks argues a few major points. First, that there is a gender bias in the classroom; second that this results in women, particularly women of color, having a second class education; and finally, that we need to take concrete steps to correct the problem.

As to whether there is a gender bias in the classroom, you have to look at the statistics that Professor Banks makes use of. Like Professor Adams, I have problems with the absence of observational data. For example, I was talking to my son the other day, and I asked him, "How's your teacher?" He said, "Oh, she's great! She's a terrific teacher." I said, "Why do you think that?" He replied,

31. See, e.g., A. MACINTYRE, *AFTER VIRTUE* (2d ed. 1984); *Epistemological Crises, Dramatic Narrative, and the Philosophy of Science*, *THE MONIST* 60 (1977); Winter, *Transcendental Nonsense, Metaphoric Reasoning and the Cognitive Stakes for the Law*, 137 *U. PA. L. REV.* 1105 (1989); *The Cognitive Dimension of the Agon between Legal Power and Narrative Meaning*, 87 *MICH. L. REV.* 2225 (1989).

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"Well, she gives me really easy work to do." I said, "Well, that's interesting." What I am suggesting is that people give responses to questions and honestly believe them, but they may have other motivations that cause them to believe those particular responses, which may or may not cause the data to be misleading. I guess the answer is that we may need more information to know whether or not the responses are misleading. Even if women are participating less in the classroom in their third year than in their first year, that could be attributable to factors unrelated to sexism in the classroom. For example, a student might decide to participate less in class because class participation is unrelated to the student's grades.

Another problem with the survey is the finding that at four or five law schools, "some professors make sexist, racist, homophobic, or religious comments." What is a "racist" or a "sexist" comment? What does it mean to say that there are "some" sexist professors? How many is "some"? There is a lot of subjectivity in these and other responses.

Going beyond the limitations of the survey, I think there is good reason to conclude that sexism is not rampant in law schools. Most professors would not intentionally make sexist or offensive statements. Let me tell you why. The fact is that there are a lot of women in law schools. In fact, women comprise at least 40% of the entering class at the vast majority of ABA-approved law schools.³² Law schools are run in such a way that law students are able to generate pressure on faculty members in a number of ways.³³ They can complain to the dean; they can give faculty members bad evaluations or refuse to sign up for their classes. The question is, does a professor want to run the risk of incurring the wrath of a large percentage of his or her class by making offensive comments? All of these actions could have adverse effects on the faculty member's salary, his or her chances for promotions and various other perks.

On top of that, most professors like to get along with their students or they most likely would not be in this business. It just seems strange to me that people would go out of their way to make comments that are purposely offensive to almost one-half of their students; it just doesn't seem altogether rational. Of course, another

32. See A REVIEW OF LEGAL EDUCATION FALL 1988, *supra* note 7, at 4-61. At many schools fully one-half of the entering students are women. See *id.*

33. See A. D'Amato, *The Decline and Fall of Legal Teaching in the Age of Student Consumerism*, 37 J. LEGAL EDUC. 461 (1987).

explanation is that they do not realize what they are saying. But, at least in terms of making intentionally offensive remarks, it just does not seem to be in the faculty member's own self-interest, putting everything else aside. On the other hand, we should be more concerned about instances of sexual harassment because it is in precisely these cases that faculty members may be able to advance their own interests through inappropriate conduct.

The next part of Professor Banks's thesis that I want to address is, what is the impact of the supposed sexism on students in law school? Professor Banks argues that women law students are participating less and are alienated. If that were true, then you might expect to see women doing a lot worse than men in terms of their academic careers. They would be scoring lower on exams. There is no reason to think that women are not doing as well as men. I don't really see that kind of alienation, at least in terms of it being manifested by performance, either in class or on exams.

Assuming, *arguendo*, that there is a lot of racism and sexism in the classroom and it is having some impact in terms of giving women and people of color a second class education, what do we do about it? At the University of Michigan, they decided they would pass a rule forbidding sexist comments, racist comments, forbidding slights against Vietnam Veterans, and on and on it went. After a while, they found that the rule so inhibited classroom discussion that it became extremely difficult to conduct a class. In addition, the ACLU successfully challenged the university rules on the ground that they were unconstitutionally overbroad and vague and violated students' first and fourteenth amendment rights.³⁴ What I am saying is that there may be a problem structuring rules in such a way as to limit what people can say, because there are going to be other significant losses if you do that.

Also, I think there would be serious problems of academic freedom involved if we started telling professors that they could not use the Socratic method because it caused a disproportionately high number of women law students to be unwilling to participate in class or because some women perceived themselves to be the victims of gender bias. The professor might reasonably believe that the best way to teach his particular materials is through the Socratic method and then to heap abuse on unprepared students. Although this is not

34. *Doe v. University of Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989).

an approach that I prefer, I would be very reluctant to make it impermissible.

My last point is that the real issue we should be addressing is tolerance for other people and other people's views. What concerns me is that there are both professors and students who are not as tolerant of other people's views and other people's manner of thinking as they should be. They then proceed to make *ad hominem* attacks on the people with whose views or methods they differ. That is very disturbing.

Professor Banks's Response

Let me just respond. First, I stand by my data and conclusions. Second, throughout the study that was published, I emphasized that I am talking about students' perceptions. I am not saying that the perceptions are accurate perceptions. But I am saying that the perception itself impacts upon the student's ability to learn. And that we, as teachers, need to be cognizant of that fact, and must try to change that perception even if it is erroneous.

Let me clearly explain to people who have not read the article and do not know the nature of the questions that the questionnaire was purposely designed not to let the students know that I was trying to determine if they thought there was any gender bias. In point of fact, the questionnaire had a cover sheet which said, "We are doing a survey of students' attitudes about the classroom climate." It asked very general questions about the students' perceptions of the climate, and then proceeded to compare the differences in responses as between gender. I came to the conclusion that the differences in perceptions tended to support some of the anecdotal information which has been published.³⁵ All I am saying is that our subsequent interviews, although a very small sample, and the larger survey results tend to further substantiate this finding.

What is even more interesting is that the responses to the questionnaire, when submitted to people of color, both male and female, seemed to suggest that there is a significant difference in the perceptions of students of color when compared to white males.

35. See, e.g., J. Elkins, ed., *Worlds of Silence: Women In Law School*, 8 ALSA F. 1 (1984); Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U. L. REV. 1141 (1985); Erickson, *Legal Education: The Last Bastion of Sex Bias?*, 10 NOVA L.J. 457 (1986); Hill, *Sexual Bias in the Law School Classroom: One Student's Perspective*, 28 J. LEGAL EDUC. 603 (1988); Bean, *The Gender Gap in the Law School Classroom—Beyond Survival*, 14 VT. L. REV. 23 (1989).

As to Professor Gross's comment that alienation, assuming that it is alienation, does not have a significant effect on female students' performance, I am saying, "How do we know?" How do we know if women are performing at their highest level? Perhaps the problem is that women are doing well, but could do even better if they were in a more supportive environment.