

Women in the Law School: It's Time for More Change*

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Over the past decade, women have made significant strides toward equality in many areas of the legal profession. The large increase in the number of women attending law school and the growing percentage of women associates at major law firms are just two examples.¹ In other areas, however, particularly at the profession's highest levels, women have yet to achieve full partnership with their male colleagues. Women still constitute a disappointingly small percentage of state and federal judges, partners in private law firms and tenured law school professors.² Indeed, a re-

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1. In 1986, women accounted for 41 percent of all law students and 16 percent of all practicing attorneys. Project, *Gender, Legal Education, and the Legal Profession*, 40 Stan. L. Rev. 1209, 1209 (1988). According to the *National Law Journal*, women comprised 40 percent of the associates hired at the nation's largest law firms over the past two years. Doreen Weisenhaus, *Still a Long Way to Go For Women, Minorities*, Nat'l L. J., Feb. 8, 1988, at 1.

2. As of 1985, only 7.2 percent of full time state court judges and 7.4 percent of federal court judges were women. Karen Tokarz, *Women Judges and Merit Selection Under the Missouri Plan*, 64 Wash. U. L. Q. 903, 915 (1986). In 1987, women constituted less than 8 percent of the partners at the nation's major law firms. Weisenhaus, *supra* note 1, at 1. Some top firms still have no female partners. *Id.* According to a 1987 survey conducted by Georgetown University law professor Richard Chused for the Society of American Law Teachers (SALT), women constitute only 11 percent of all tenured classroom faculty and hold less than 16 percent of all tenured and tenure track positions at ABA accredited law schools. Richard Chused, *The Hiring and Retention of Minority and Female Faculty in American Law Schools* 14, 26 (Table 2) (1988) (unpublished study, on file with authors); see also Terry Carter, *Women Face Hurdles As Professors*, Nat'l L. J., Oct. 24, 1988, at 1, 30-31 (discussing study results). Moreover, the SALT study found that so-called prestige law schools tend to lag behind others in hiring and tenuring women faculty. Chused, *supra*, at 14-15. Finally, as of January, 1988, there were only nine women deans at the 174 ABA accredited law schools, or 5.16 percent. Marina Angel, *Women in Legal Education: What It's Like To Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 Temple L. Rev. 799, 802 (1988).

Consistent with these statistics, a recent history of women lawyers in the United States concludes that "while women seem to be making important gains in

cent American Bar Association Journal article entitled *Women in Law* queried whether a "glass ceiling" keeps a majority of women "from enjoying the full rights and privileges of being a lawyer."³

As legal educators, we recognize that law schools play a unique and critical role in shaping our attitudes toward the law and the legal profession. For most future lawyers, law school transmits the first and the most enduring messages about appropriate behavior within their chosen profession. Law schools also educate and mold the future lawyers who will guide the profession and society into the twenty-first century. For these reasons, the experiences of women in the law school, either as students or as professors, profoundly affect the status of women in the legal profession and in society as a whole.⁴

I. Student/Faculty Interactions

Interactions between law students and faculty members play an important role in educating lawyers and transmitting the values that govern the legal profession. When these student-faculty interactions devalue women or minimize women's potential contributions as lawyers, students of both sexes learn that women are still not fully welcome in the legal profession.

Law schools that tolerate the sexual harassment of women students seriously undermine efforts to ensure women's full and equal participation in the legal profession. Sexual harassment can take several forms. The most blatant type of harassment is the direct quid pro quo: a professor or an administrator, either explicitly or implicitly, makes a student's submission to sexual advances a condition for the receipt of some benefit, such as a grade or an employment recommendation.⁵ Alternatively, the professor may openly retaliate against a student who spurns his advances, for example, by lowering her grade.

A more subtle form of harassment occurs when a professor

entry-level positions, they still are not making a significant impact on the prestigious and powerful areas of the law." Karen Morello, *The Invisible Bar* 195 (1986). A recent study of women in legal education similarly reports "that women faculty members disappear at a substantially higher rate than men faculty members, and that women consistently are closed out of the higher ranks of legal education." Angel, *supra* at 801.

3. *Women in Law: The Glass Ceiling*, A.B.A. J., June 1, 1988 at 49.

4. The experiences of women as support staff and other law school employees also affect women's status in the profession and the larger society. For reasons of brevity, this article focuses on the experiences of women as law students and faculty members.

5. Ronna Greff Scheider, *Sexual Harassment and Higher Education*, 65 Tex. L. Rev. 525, 535-36 (1987).

uses a student's reaction to his sexual advances in decisions affecting that student. Today, a top-notch student may reject a professor's overtures; tomorrow, under ambiguous circumstances, she may receive a lukewarm job reference from the professor. Sexual harassment also occurs when a professor's sexually-oriented behavior has the purpose or effect of unreasonably interfering with a student's academic performance or of creating an intimidating, hostile, or offensive environment.

To combat these problems, law schools must adopt strong policies that prohibit all forms of sexual harassment, and they must establish specific procedures to deal with harassment complaints. The existence and publication of these procedures are important, since victims of sexual harassment often fear ridicule or retaliation if they seek redress. Law school publications should highlight these anti-harassment policies and should include a strong statement emphasizing the school's commitment to respond promptly and decisively to all allegations of sexual harassment.⁶

Dating between law students and faculty members arguably presents a more complicated issue. Some contend that there is no basis for restricting voluntary relationships between adults. But more is at stake in faculty-student dating. For years, the perception of women as primarily sexual beings interfered with their ability to be taken seriously as professionals.⁷ Where romantic relationships exist between male faculty and female students, the sexuality of female students may become more important than their professionalism. Moreover, most student-faculty relationships involve significant imbalances of power; a romantic liaison may be the product of that power imbalance and it may open the door for misuse of the professor's position, particularly should the relationship sour. It is in part for these reasons that sexual relationships in other professional settings such as doctor-patient⁸ and

6. The University of Minnesota, for example, recently issued a pamphlet highlighting the pernicious effects of sexual harassment on campus and explaining the procedures the University has adopted to combat such harassment. These procedures include the establishment of an Entry Level Office responsible for handling harassment complaints, disseminating information on the University's anti-harassment policies, and assisting harassment victims. The pamphlet also contains a comprehensive definition of sexual harassment and gives specific examples of sexually harassing behavior in an academic setting. *Sexual Harassment: We Want to Help*. Available from Office of Equal Opportunity and Affirmative Action, 419 Morrill Hall, 100 Church St. S.E., Minneapolis, Minn. 55455.

7. See Eyster, *supra* note 5. See also *The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts—June 1984*, 9 Women's Rts. L. Rep. 129, 136-44 (1986).

8. See, e.g., John Petrila, *Mental Health Therapies*, 1 Biolaw 177, 198-99 (1986) (psychiatrists).

lawyer-client⁹ are ethically suspect. Similar ethical concerns counsel strongly against faculty-student dating. In addition, a romantic relationship between a professor and a student may create a perception of unfairness on the part of other students, both in the professor's class and elsewhere at the school. For all these reasons, law schools should strongly discourage, if not prohibit, dating between professors and students. The minefield that faculty-student dating creates for women (and men) students far outweighs any marginal restriction on personal freedom such a prohibition entails.

Student-faculty interaction in the classroom is also a critical component of women's law school experience. Law schools must critically re-examine traditional classroom dynamics and course materials to determine how these may exclude or silence women students. Women law students across the country have identified many attitudes and behaviors that make them feel like outsiders in the classroom and, ultimately, the legal profession.¹⁰ These behaviors include sexist and sexual jokes in class; professors not calling on women students to the same extent or in the same way as they call on men; professors not listening or not responding to women's comments; professors using "he" exclusively or not including women in their classroom hypotheticals; professors using classroom problems that overemphasize women as sexual objects or victims, particularly the undue focus on rape and other sex crimes in some criminal law and evidence classes; and professors using fact patterns on exams that focus on predominantly male experiences (e.g. football or auto racing) that ignore women altogether or that place women exclusively in stereotypically female roles.

To respond to these problems, law professors need to examine their own classroom dynamics and behaviors, both individually and as part of a collective faculty effort. Law faculties should enlist the aid of individual women students, student groups and outside experts to identify classroom issues of concern to women

9. See *People v. Gibbons*, 685 P.2d 168, 175 (Colo. 1984); *In re Liebowitz*, 101 N.J. 632 (1985).

10. See, e.g., Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 Stan. L. Rev. 1299 (1988). A recent study by University of Tulsa College of Law professor Taunya Lovell Banks found that women law students are almost twice as likely as men never to volunteer in class: 17.6 percent of women never volunteer, as opposed to 9.6 percent of men. Banks' study also shows that women grow more reluctant to participate each year they are in law school. The first year of law school, 15.9 percent of the women never volunteer, as opposed to 6.7 percent of men. By the third year, 25 percent of women never volunteer, as opposed to 16.9 percent of men. Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. Legal Educ. 137, 141-42 (1988).

and to find ways to address these issues. As feminist scholars have demonstrated, a critical reassessment of law school pedagogy is necessary to ensure that women as well as men law students receive an education that credits their experience and values their involvement.¹¹

II. Curriculum and Course Materials

Gender bias in the law school curriculum also affects women's law school experience. Law teachers across the country have begun to explore the problem of gender bias in the law school curriculum and casebooks, in terms of both biased coverage and omission of issues of concern to women. In 1983, Professors Nancy Erickson and Nadine Taub initiated a project on sex bias in the teaching of criminal law. Among the areas of particular concern were the cavalier treatment of rape in many criminal law courses and the absence of materials on domestic violence.¹² The completed study will be available to criminal law teachers and will provide supplementary course materials and suggestions for remedying gender bias.¹³

Similar efforts to identify and remedy gender bias are occurring in Torts, Property and Contracts.¹⁴ In addition, recent legal scholarship has begun to analyze gender bias in legal doctrine, casebooks and curriculum content.¹⁵ Scholars have also begun to explore and to critique the traditional pedagogy of legal education that leaves many women students feeling alienated and deval-

11. See generally Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 Berkeley Women's L. J. 39 (1985).

12. Erickson studies seven of the most widely used criminal casebooks. Only two had materials on battered spouses, and one of the two simply had a note stating it is no longer legal for a husband to beat his wife. Debra Cassens Moss, *Would This Happen to a Man?*, A.B.A. J., June 1988, at 50, 52.

13. For a preliminary report of this project, see Nancy Erickson, *Legal Education: The Last Academic Bastion for Sex Bias?*, 10 Nova L. J. 457 (1986).

14. At the January 1987 Association of American Law Schools (AALS) Annual Meeting in Los Angeles, the Section on Torts and the Section on Women in Legal Education co-sponsored a panel entitled "Teaching Torts: A New Perspective." The panel focused on sex bias in the teaching of torts and on ways to increase consideration of women's issues in the first year torts course. Panel Discussion, *Teaching Torts: A New Perspective*, AALS Annual Meeting (Jan. 1987).

15. See, e.g., Mary Jo Frug, *Re-reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 Am. U.L. Rev. 1065 (1985); Margaret Jane Radin, *Market-Inalienability*, 100 Harv. L. Rev. 1849 (1987). See also materials developed for the Women and the Law Project of American University Law School program on gender-bias in the first year curriculum, AALS Annual Meeting (Jan. 1986); and materials on gender bias in torts, prepared for the program, *Torts: A New Perspective*, jointly sponsored by the AALS Torts Section and the Section on Women in Legal Education. Panel Discussion, *supra* note 15.

ued.¹⁶ Law teachers should support these efforts and should use the studies as starting points to examine and correct gender bias in their own curriculum and course materials. Many of us at the University of Maryland have discovered, to our chagrin, portions of course materials we customarily adopt that both fail to raise relevant gender-bias issues, and treat insensitively issues relating to women's sexuality. It will take sustained, vigorous efforts to eradicate sexually offensive curriculum content and to incorporate women's voices into legal casebooks and, more importantly, legal doctrine.

III. Placement

Although state and federal anti-discrimination laws¹⁷ prohibit discrimination against women lawyers and law students on the basis of sex in hiring decisions and conditions of employment, women law students complain regularly that discrimination occurs. For example, interviewers from major law firms ask women law students about their family plans, but do not raise similar questions with male applicants.¹⁸ Some employers appear to assume that women law students will have traditional life patterns involving marriage and childcare, and that their careers will take second place. Similarly, female candidates for judicial clerkships are often queried about daycare arrangements and birth control methods.¹⁹

16. See, e.g., Menkel-Meadow, *supra* note 12.

17. 20 U.S.C. § 1681 (1982); 42 U.S.C. §§ 2000e - 2000e-3 (1982 & Supp. 1986). See, e.g., Minn. Stat. § 363.12 (1988).

18. The authors have been fielding complaints of discriminatory interviewing practices from law students for as long as 15 years. What is remarkable is the consistency of the substantive complaints over such a long period of time. The experience of the authors is confirmed in surveys such as that conducted by the New Jersey Task Force on Women in the Courts:

One aspect of employment which impacts upon the career opportunities of women attorneys is the job interview process itself. Despite the existence of state and federal statutes prohibiting employment discrimination, female job applicants are often asked inappropriate questions at both law firm and judicial clerkship interviews. Women survey respondents reported recurring instances in which they were asked questions concerning their intentions to have children, use of birth control, the availability of child care and whether they had their spouse's consent to work.

The First Year Report of the New Jersey Task Force on Women and the Courts—June 1984, supra note 8, at 144.

19. See *supra* note 19. Also remarkable is the fact that interview-level discrimination does not end when the law student gets her first job. Women applicants for judicial appointment in Maryland report being asked similar questions regarding their family responsibilities by judicial selection committees. *Hearings Before the Maryland Special Joint Comm. on Gender Bias in the Courts*, (Sept. 22, 1987) (testimony of Anne Ogletree); (Sept. 30, 1987) (testimony of Gail Bagaria); and (Oct. 13, 1987) (testimony of Albert Matricciani) (transcripts on file with *Law & Inequality*).

Law schools have two important roles to play in eliminating such discrimination. The first is informational, and the second is remedial. First, rather than wait for individual students to report problems, placement offices should remind potential employers of what constitutes discriminatory and nondiscriminatory hiring practices. Employers wishing to use placement office services should be required to provide law schools with information on the numbers of men and women lawyers in their offices and the average number of years each group of lawyers stays with the office. If the employer is a law firm, the information should indicate the relative numbers of male and female partners, associates and permanent associates. On the remedial side, law schools should deny the use of placement facilities to employers with discriminatory practices. To implement this policy, law schools must adopt procedures for students to register discrimination complaints without exposing complaining students to retaliation. Further, schools should join together in anti-discrimination efforts so that students from all institutions are treated equally.

Both women and men students today have concerns about combining and balancing career and family responsibilities. Because women in our society still bear the greater burden of caring for families, women law students are likely to have greater concerns in this regard.²⁰ Employers wishing to recruit at law schools should be required to respond to these concerns by providing placement offices with written policies about maternity and parenting leave, part-time work opportunities and daycare facilities available to employees at or near the office. Placement offices also should inform students about potential employers who fail to provide adequate information.

Although the percentage of women law students has grown rapidly in recent years, women lawyers who have been in practice for more than a decade are still relatively rare.²¹ As a result, wo-

20. See Project, *Law Firms and Lawyers with Children: An Empirical Analysis of Family/Work Conflict*, 34 *Stan. L. Rev.* 1263 (1982).

21. As recently as 1970, women constituted less than 5 percent of the lawyers and less than 9 percent of the law students in the United States. In the decade between 1970 and 1980, both the number and the percentage of women lawyers grew dramatically. See Cynthia Fuchs Epstein, *Women in Law* 4-5, 53 (1981). Seventy-five percent of the women lawyers now in practice in this country graduated from law school after 1970. *Women In Law: The Glass Ceiling*, A.B.A. J., June 1988, at 49; see ABA Section on Legal Education and Admissions to the Bar, *A Review of Legal Education in the United States, Fall, 1986, Law Schools and Bar Admissions Requirements* 66 (1987). A recent survey of the Maryland bar conducted for the Special Joint Committee on Gender Bias in the Courts found that 86 percent of women lawyers had practiced law for ten years or less, while only 47 percent of men were in that category (unpublished survey, on file with the authors).

men have little information about how gender may affect the development of their legal careers. Moreover, because of the small number of experienced women attorneys, and the sexism that still exists in society, women law students do not find legal mentors as readily as men. Placement offices should respond to these needs by initiating programs that put women law students and lawyers in touch with each other and by encouraging all alumni to develop mentoring relationships with junior women and minority lawyers.

Many women lawyers depart from the beaten path of the traditional law firm private practice career.²² They develop careers in the government, the labor movement and public interest law. Placement offices thus should make a special effort to provide information about employment opportunities and career development in these areas.

IV. Student Experience

Law students, whether male or female, do not arrive at law school untouched by gender bias and by culturally-approved ideas about gender roles. As a result, and despite significant strides toward workplace equality, women as a group retain primary responsibility for child care and housework. Ensuring women's full participation in the legal profession requires that law schools, as well as employers, accommodate these responsibilities. For example, law schools should ensure that class schedules do not preclude family time and that part-time day programs be available to students with major child care responsibilities. Affordable child care facilities with daytime, evening and weekend hours should also be available, either on or near campus. Law school practices in this regard are particularly important since law schools serve as models for the profession and for other legal employers.

Another consequence of societal gender bias is that students

22. There are a number of reasons why women law students may reject law firm practice. First, women may be discouraged by the subtle, and not so subtle, sex discrimination that still exists at many law firms. For example, in 1983, at the same time as it was being sued for sex discrimination in partnership decisions, the Atlanta law firm of King & Spaulding announced plans to hold a wet T-shirt contest involving its female summer associates. Morello, *supra* note 2, at 216-217. Second, some evidence suggests that women law students may be more concerned than their male counterparts with pursuing social justice and serving the poor. Project, *supra* note 1, at 1219, 1238. Third, some women may find firm practice, particularly large firm practice, incompatible with their actual and anticipated family responsibilities. See, e.g., Nancy Blodgett, *Whatever Happened to the Class of '81*, A.B.A. J., June 1988, at 56-58; Deborah Rhode, *Perspectives on Professional Women*, 40 Stan. L. Rev. 1163, 1185-87 (1988); Angel, *supra* note 2, at 837-38. *Hearings Before the Maryland Special Joint Comm. on Gender Bias in the Courts*, (Oct. 13, 1987) (testimony of Albert Matricciani) (transcript on file with *Law & Inequality*).

may discriminate against each other in student-run activities and in the classroom. Law schools need to be sensitive to the potential for peer group discrimination and take necessary steps to ensure that women and minority students have equal opportunities to participate in student activities, including law review and student government. In addition, law schools must be vigilant to prevent student-to-student sexual harassment.

Law schools should also be sensitive to the needs of older students, many of whom are women, for special assistance in placement and financial aid. Older students often have particular financial needs such as supporting children or elderly parents. Many older students complain of subtle discrimination by employers.

V. Faculty Recruitment and Retention

Very few law schools can boast of having the same percentage of women faculty members as they have of women students. In part, the smaller numbers are a result of the relatively recent entrance of large numbers of women into law. In part, however, the small numbers are the result of recruiting efforts that overlook women or discriminate against women applicants and women tenure candidates.²³ These practices cannot be tolerated. On the contrary, law schools must make affirmative efforts to include and retain more women on their faculties.

Increasing the numbers of women faculty is in part a matter of simple fairness to women candidates. It is also a matter of educational fairness to women students who want and need female role models. The legal profession also benefits because both male and female lawyers learn early in their careers that women as well as men hold positions of high professional esteem, such as law professorships and deanships.

To improve their recruitment of women faculty, law schools must broaden both the group of people considered for positions and the criteria used for evaluating candidates. For example, faculty hiring committees should actively seek names of potential women candidates from both male and female faculty members at other schools. Law schools should also consider, as experience relevant to teaching, practice in public interest, government and labor union offices, career paths frequented by women lawyers.

Increasing the number of women hired by law schools will not be enough to produce lasting change, however, particularly in

23. See Chused, *supra* note 2.

times of declining budgets and concern about continuing levels of student enrollment. Recent tenure battles involving well-known feminist scholars at Harvard and the University of Pennsylvania Law Schools underscore the fragility of the gains that women academics have made.²⁴ Law schools must be vigilant to ensure that sex discrimination and sexist attitudes toward legal scholarship do not infect the tenure process.

Law schools must also pay special attention to the difficulties women can face in gaining tenure. Unfortunately, women are entering law teaching at a time when fewer and fewer professors are receiving tenure.²⁵ It thus becomes even more critical to remove any barrier that affects women more heavily than men on the road to tenure.

In many law schools, women faculty are recruited and hired, but then are treated as second-class citizens. In some law schools, they are "ghettoized" by teaching assignments in legal writing, legal method and clinical programs.²⁶ While these women contribute to the education of law students in many important ways, their own careers are not equivalent to those of most male faculty. Often, they are ineligible for tenure and may hold only short-term appointments. Even if they are eligible for tenure, overwhelming teaching loads can interfere with the production of scholarly work. The important work they do produce, such as innovative teaching materials or impressive writing for purposes of litigation or public service, is overlooked in the tenure process, where only traditional types of scholarship count.

Women teachers face additional problems if they are at schools that have few women faculty members. Some are asked to be the "women's voice" on numerous faculty, school and university committees and, as a result, are overburdened with community service work. Minority women are likely to be doubly burdened. Although important, this community service work does not contribute to the scholarly reputation needed for tenure. Women law students also tend to flock to women faculty for advice on academics and career development; again, where there are few women faculty, this counseling role can become overwhelming.

In addition, women are likely to face decisions about childbearing during the same years that they are being evaluated

24. See Moss, *supra* note 13, at 50.

25. Carter, *supra* note 2.

26. A recent study by Georgetown University law professor Richard Chused for the Society of American Law Teachers found that approximately two-thirds of legal writing positions are filled by women. These are usually contract positions terminable at the end of the year. Moss, *supra* note 13, at 53.

for tenure. Men may be able to put off beginning a family until after the tenure decision or, because of cultural values, may be able to rely on a wife to assume major childrearing responsibilities. Most women do not have these choices.

As scholars, many women find that they have difficulty in developing useful mentoring relationships with senior faculty members. Such mentoring relationships can help a junior faculty member develop his or her scholarly potential, and their absence can hamper development. Women also may face problems getting accurate and timely feedback about their scholarship from senior faculty members and deans because, as women, they are not taken seriously as scholars. This attitude may be particularly damaging for women who choose to write about gender-based discrimination and other issues of particular concern to women.²⁷

To remedy these problems, law schools need to ensure that women faculty are recruited on an equal basis with men and do not face special obstacles on the road to tenure. Schools should have written policies on such matters as recruitment and retention of women faculty, teaching assignments, tenure track appointments, scholarship requirements, and maternity and parenting leave. These policies should take into account the particular barriers that women may face, that make their road to tenure more precarious than the path of a man in similar circumstances. For example, schools need to have adequate and predictable sick leave and disability policies that permit women who bear children to be home during the period of their disability.

Schools also need policies that enable both female and male faculty members to combine active family responsibilities with successful academic careers. In particular, schools should make clear, through statements of principle, that faculty members can take time to care for dependents without jeopardizing their prospects for tenure or career advancement. Law school policies in this area should allow flexibility, since the precise type of accommodation a faculty parent may need is likely to vary with his or her circumstances and career stage. Some parents will need an extension of the pre-tenure period; others may require a leave of absence; still others may need a modified teaching schedule or a stint of part-time rather than full-time academic responsibilities. All of these

27. Stanford Law School Professor Deborah Rhode reports that her dean strongly advised against teaching or doing research in the area of gender discrimination, since, in his view, this subject was at the bottom of the academic pecking order. *Id.* at 52.

options should be available, and none should detract from a faculty member's prospects for tenure.

VI. Conclusion

Efforts to incorporate women as full and equal members of the legal profession must begin with reforms in legal education. Law schools should jettison faculty behaviors and pedagogies that devalue women and should replace them with teaching methods and materials that encourage women's participation and engagement in legal learning. As employers, and as models for other legal institutions, law schools must strengthen efforts to recruit and retain women faculty and must remove barriers that inhibit the advancement of women scholars. In short, law schools must work actively to eliminate, rather than reinforce, the "glass ceiling" that impedes the careers of so many women lawyers.