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SOME DUMB GIRL SYNDROME: CHALLENGING AND SUBVERTING DESTRUCTIVE STEREOTYPES OF FEMALE ATTORNEYS

ANN BARTOW*

I. INTRODUCTION

Almost every woman has had the experience of being trivialized, regarded as if she is just 'some dumb girl,' of whom few productive accomplishments can be expected. When viewed simply as 'some dumb girls,' women are treated dismissively, as if their thoughts or contributions are unlikely to be of value and are unworthy of consideration.

'Some Dumb Girl Syndrome' can arise in deeply personal spheres. A friend once described an instance of this phenomenon: When a hurricane threatened her coastal community, her husband, a military pilot, was ordered to fly his airplane to a base in the Midwest, far from the destructive reach of the impending storm. This left her alone with their two small children. Completely on her own, she nailed plywood over the windows of their home, moved her valuables to the second floor of the residence, packed sleeping bags and extra clothing, and evacuated the children and pets to an emergency shelter in the middle of the night when the hurricane unexpectedly veered and directly hit her community. After the flooding subsided, she returned home to a power outage, located candles and fired up a generator, fastened large plastic tarps over the holes in the roof, and offered food and shelter to her neighbors whose homes had been damaged beyond habitation. When her husband was given permission to return a few days later, the first thing he thought to ask her after walking through the front door was whether she had remembered to put gas in their car. He was, she reported, talking to her as if she was just 'some dumb girl,' even after all the hurricane-related adversity she had independently and impeccably handled. The overwhelming anger

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this inspired at that moment brought her perilously close to suggesting a divorce.

The effects of being inappropriately disregarded as 'some dumb girl' are no less debilitating or destructive when such treatment occurs in the professional realm. Every time prescient and probing comments and questions are dismissed as stupid or irrelevant because they are posited by 'some dumb girl,' intellectual discourse is degraded. On every occasion or at every venue at which the contributions of 'some dumb girls' are ignored, minimized, or attributed to men, women are discouraged from further participation.

II. DUMB VERSUS EVIL

"Well, it is obvious, isn't it, that feminism increases pollution and hence, possibly, global warming?"¹

The only advantage of compliantly accepting the designation of 'some dumb girl' is that at least one avoids characterization as a feminist, with all the venomous connotations this entails. The negative phenomena rhetorically linked to feminism are both myriad and mind-boggling. Feminism as a social construct has been

1. Angry Harry, *Feminism Causes Traffic Congestion?*, at <http://www.angryharry.com/esFeminismCausesTrafficCongestion.htm> (last visited Oct. 18, 2004).

In fact, very little could be more obvious! The more that women go out to work, and the more that families break down, and the greater is the gender divide, the more traveling, heating, energy consumption, traffic congestion and pollution that there is going to be. This is an important subject. It affects the whole planet. And yet, if you take a look at all the books by the clever politically-correct professors and review the Gender Studies Courses, I'll bet that you won't find one mention of the negative effects of feminism on the eco-system. There is this huge monstrous effect of feminism, and these arseholes are either too stupid to even notice the connection or too deceitful and manipulative to even mention it! This is who these people are. They are either stupid, or they are manipulative liars. Mostly, they are stupid. Also notice that the politically correct tend to hang out together. And yet they'll be complaining about the catastrophe of global warming and the demise of the eco-system on the one day, but, on the very next day, they will *all* be extolling the virtues of feminism — and never will the two parts of the same brains meet!

blamed for promulgating terrorism,² ruining sexual relationships,³ causing road rage and traffic congestion,⁴ and undermining healthy families.⁵ Feminists have been accused of being hostile to “serious” science,⁶ of urging women “to become just as promiscuous and irresponsible as . . . men,”⁷ and of engaging in “the systematic eroding of the moral foundation of our society in the name of *freedom*.”⁸ Feminism was identified by a Catholic Archbishop “as one of the secular evils that make the United States ‘a hostile, alien environment’ for Catholics,” and he equated feminism with “the drug culture,” “the sexual revolution,” “hedonism,” “consumerism,” and “the culture of death.”⁹ Feminism was described by an Islamic scholar as “an unnatural, artificial and abnormal product of contemporary social disintegration, which in turn is the inevitable result of the rejection of all transcendental, absolute moral and spiritual values.”¹⁰ Attempts to socially reconstruct feminism as a force of unremitting evil are frequent and widespread.

The false tautology that progress for women in any context signifies lost ground for men also remains brashly extant. For

2. See Falwell *Apologizes to Gays, Feminists, Lesbians*, at <http://www.cnn.com/2001/US/09/14/Falwell.apology/> (Sept. 14, 2001).

3. See Megan C. Gurdon, *Damage and Double Standards*, WALL ST. J., Aug. 17, 2004, at D8, available at http://online.wsj.com/article_email/0,,SB109269441783792904-INjeoNplaJ3o5yta3yHcKyHm4,00.html.

Neil Boyd is evidently a very courageous fellow, for he has written a book that accuses radical feminists of perverting the course of what he believes to be “the most important social movement of the last century.” In “Big Sister . . .” he details the way certain hysterical females have through their writing, advocacy and courtroom appearances engendered an Orwellian atmosphere in bedrooms across North America. And not just bedrooms: dorm rooms, hotel rooms, offices, universities and anywhere else that men and women are liable to encounter one another.

Id.

4. See Angry Harry, *supra* note 1.

5. See Associated Press, *Vatican Criticizes Radical Feminism*, at <http://msnbc.msn.com/id/5558772/> (July 31, 2004); David N. Bess, *Unveiling Feminism*, at <http://www.american.daily.com/article/110> (Jan. 19, 2004).

6. See Robert Sheaffer, *Feminism, the Noble Lie*, at <http://www.debunker.com/texts/noblelie.html> (Apr. 1997).

7. Chancey, *You Don't Know Feminism*, at http://www.ladiesagainstfeminism.com/artman/publish/article_744.shtml (Jan. 23, 2004).

8. Trevor Bothwell, *A Handbag of Hypocrisy* (quoting Dr. Laura Schlessinger) (emphasis added by Bothwell), available at <http://www.cbipolicyinstitute.org/handbag/hypocrisy.htm> (last visited Oct. 18, 2004).

9. Eileen McNamara, *Linking Evil to Feminism*, BOSTON GLOBE, Apr. 11, 2004, at B1 (quoting Archbishop Sean P. O'Malley).

10. Maryam Jameelah, *The Feminist Movement and the Muslim Woman*, at <http://www.islam101.com/women/jameelah.htm> (last visited Oct. 18, 2004).

example, one commentator faulted Title IX¹¹ and the “feminists” who urge its enforcement for the tragic fact that while in 2000 the United States sent 264 women and 338 men to the Sydney Olympics, in 2004 this country sent 263 women but only 282 men to the Summer Olympics in Athens.¹² In reality, the decline in the number of male U.S. Olympic athletes was directly attributable to the fact that in 2000 the U.S. men’s baseball and soccer teams competed in the Summer Olympics, but in 2004 both teams failed to qualify.¹³ Happily, the talented U.S. women’s softball and soccer teams not only qualified for the Athens Olympics, but excelled there, winning gold medals.¹⁴ Linking the lesser performances of the corollary men’s teams to Title IX (without any evidence of a causal connection) simultaneously undercut the impressive achievements of the women, and reinforced erroneous assumptions that the allocation of resources for women’s athletics automatically lessened those available for men.¹⁵

After surveying this rather bleak dialectical terrain, one might somewhat cynically (but probably correctly) recognize that feminists are credited with profound negative influence largely as a mechanism for preventing them from gaining enough positive influence to affect significant social changes.¹⁶ Attempts to discourage women

11. 20 U.S.C. § 1681 (1972). See STEVEN E. RHOADS, *TAKING SEX DIFFERENCES SERIOUSLY* 244 (2004). Title IX was equated by UVA political science professor Steven E. Rhoads with the sexual revolution, fatherless families, and the call for universal day care. *Id.*; see also *About Title IX*, at <http://bailiwick.lib.uiowa.edu/ge/aboutRE.html> (last visited Oct. 18, 2004).

12. See Carrie Lukas, *No Gold in Gender Olympics: Title IX in Athens*, at <http://nationalreview.com/comment/lukas200408170825.asp> (Aug. 17, 2004).

Consider a *Washington Post* Olympic preview entitled “*Female Athletes Continue to Gain Ground*” written in April 2004. The article celebrated that nearly equal numbers of men and women — an estimated 282 men and 263 women — will represent the United States in Athens. It goes on to note that in the last summer Olympics, the U.S. sent 338 men and 264 women to compete.

Should these numbers really be cited as evidence of progress for women? The number of women competing was essentially unchanged. The so-called victory for women was the elimination of more than 50 male athletes from the U.S. roster.

Id.

13. See Geoff Calkins, *A Matter of Pride . . . and Fun . . . for U.S. Women*, at http://www.usoc.org/11767_26234.htm (Aug. 28, 2004).

14. *Id.*

15. Fairness & Accuracy in Reporting (FAIR), *Where Gender Issues are Concerned, Does PBS Stand for “Promotion Biased Stories”?*, at <http://www.fair.org/activism/national-desk.html> (Apr. 18, 1999) [hereinafter FAIR]; Women’s Sports Foundation, *Mythbusting: What Every Female Athlete Should Know!*, at <http://www.womenssportsfoundation.org/cgi-bin/iowa/issues/rights/article.html?record=34> (July 1, 2002).

16. See generally FAIR, *supra* note 15.

from identifying themselves as feminists or associating themselves with the goals of feminism are clearly intended to inhibit progress toward equality for women.¹⁷

Feminists have had profound and laudable impacts on family law,¹⁸ especially in the areas of child support, child custody, and property division,¹⁹ and on criminal law,²⁰ particularly with respect to crimes such as rape and domestic violence.²¹ Feminists were able to deconstruct oppressive legal doctrines by effectively pointing out injustices to women that even non-feminists could be made to see, and by recommending reforms that even non-feminists could appreciate as meritorious.²² Recognition of the necessity of bringing non-feminists around to the feminist viewpoint on a particular issue arguably dates back to the suffragette movement,²³ when not a single woman could vote on the issue of whether or not women would get the vote. Those resolutely seeking enfranchisement had to believe unflinchingly that the blatant unfairness of the situation would sufficiently outweigh sexism and doubts about female intelligence.²⁴ Eventually, they prevailed, as men voted to enfranchise women.

17. *Id.*

18. See Katharine T. Bartlett, *Feminism and Family Law*, 33 *FAM. L.Q.* 475 (1999); Feminist Legal Network resource list of Feminist Perspectives on Family Law, at <http://www.rdg.ac.uk/law/femlegalnet/family.htm> (last modified Apr. 12, 2003) (listing recent works relating to feminism, the feminist movement, and family law); Irwin Law Summary of ELIZABETH SHEEHY, *ADDING FEMINISM TO LAW: THE CONTRIBUTIONS OF JUSTICE CLAIRE L'HEUREUX-DUBÉ* (2004), at http://www.irwinlaw.com/books.cfm?pub_id=97&series_id=3 (last visited Oct. 22, 2004).

19. Penelope Andrews & Taunya L. Banks, *Two "Colored" Women's Conversation About the Relevance of Feminist Law Journals in the Twenty-First Century*, 12 *COLUM. J. GENDER & L.* 498 (2003) (discussing women's property rights from a feminist perspective); Penelope E. Bryan, *Reasking the Women Questions at Divorce*, 75 *CHI.-KENT L. REV.* 713 (2000); Leslie Kurshan, *Rethinking Property Rights for Women Using International Human Rights Treaties*, 8 *AM. U. J. GENDER SOC. POL'Y & L.* 353 (2000); Katherine Hunt Federle, Book Review, 39 *AM. J. LEGAL HIST.* 285 (1995) (reviewing MARY ANN MASON, *FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: THE HISTORY OF CUSTODY IN THE UNITED STATES* (1994)).

20. Feminist Legal Network resource list of Feminist Perspectives on Law: Crime, Criminal Justice, and Criminology, at <http://www.rdg.ac.uk/law/femlegalnet/crimlaw.htm> (last modified Apr. 12, 2003).

21. Jill E. Hasday, *Contest and Consent: A Legal History of Marital Rape*, 88 *CAL. L. REV.* 1373 (2000); Alexandra Wald, *What's Rightfully Ours: Toward a Property Theory of Rape*, 30 *COLUM. J.L. & SOC. PROBS.* 459 (1997).

22. See Katharine T. Bartlett, *Feminist Legal Methods*, 103 *HARV. L. REV.* 829 (1990) (exploring non-traditional feminist legal methodology).

23. Ashlie Warnick, Book Note, *Ifeminism*, 101 *MICH. L. REV.* 1602, 1603 (2003).

24. See, e.g., Doug Linder, *Women's Fight for the Vote: The Nineteenth Amendment*, at <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/nineteenth.htm> (last visited Oct. 22, 2004).

Generations later, when other feminist causes such as 'equal pay for equal work' were successfully pursued in this country, reforms were again framed as implicating fundamental fairness.²⁵ To date, despite the Nineteenth Amendment,²⁶ neither feminists, nor simply 'women' in general, have assumed numerical control of any state legislature or of either chamber of the United States Congress.²⁷ Feminists productively promulgate societal changes only by persuading non-feminists of the value of these transformations.

Flamboyant assertions about the inordinate destructive capabilities wielded by feminists posit powers outrageously disproportionate to their numbers,²⁸ and never address the curious fact that feminists who were unable to obtain passage of the Equal Rights Amendment somehow have sufficient strength and authority to effectively destroy the very fabric of society. The suggestion that ideologically undifferentiated masses of people who will not heed basic advice about quitting smoking, or exercising regularly, or limiting the amount of saturated fats in their diets are somehow mindlessly willing to follow feminists, lemming-like, into a dank cultural abyss is preposterous.

25. See, e.g., The Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2000).

26. Linder, *supra* note 24.

27. Center for Voting and Democracy, Breakdown of State Legislatures, 2003, at <http://www.fairvote.org/vrs/conggender03.htm> (last visited Oct. 22, 2004); Center for Voting and Democracy, Gender Breakdown of U.S. House and Senate, 2003, at <http://www.fairvote.org/women/index.html> (last visited Oct. 22, 2004).

28. Heather Davis, *Scholar Peers into the Feminist Generation Gap*, at <http://www.upenn.edu/researchatpenn/article.php?779&soc> (Jan. 29, 2004); *Generation Gap Explains Decline in Feminist Ranks*, at <http://www.innovations-report.de/html/berichte/gesellschaftswissenschaften/bericht-24296.html> (Dec. 17, 2003); Pia Peltola et al., *The "Feminist" Mystique: Feminist Identity in Three Generations of Women*, 18 J. OF GENDER & SOC'Y 122 (2004), available at <http://www.ingenta.com/isis/searching/Expand/ingenta?pub=infobike://sage/j213/2004/00000018/00000001/art00007>; Christine A. Smith, *I Enjoy Being a Girl: Collective Self-Esteem, Feminism, and Attitudes Towards Women*, 40 SEX ROLES: A JOURNAL OF RESEARCH 281 (1999), available at http://www.findarticles.com/p/articles/mi_m2294/is_3-4_40/ai_54710017. But see Feminist Majority Foundation, *Feminists Are the Majority*, at <http://www.feminist.org/welcome/whyname.html> (2000); Eleanor Smeal, *From Gender Gap to Gender Gulf: Abortion, Affirmative Action, and the Radical Right*, Speech at Sweet Briar College, Feb. 13, 1997, at <http://gos.sbc.edu/s/smeal.html>.

III. BROAD²⁹ GENERALIZATIONS

"People call me a feminist whenever I express sentiments that differentiate me from a doormat."³⁰

If feminists had even a fraction of the power instrumentally attributed to feminism, the legal world might look very different. Or, it might not. At a very superficial level of analysis, when writing about gender issues in the legal profession, commentators divide themselves into two groups: those who believe female lawyers to be equal and basically similar to male lawyers,³¹ and those who view women as fundamentally different from men in principally positive ways. The belief that society has differing expectations for women and men, however, is rarely contested, and is apparent even early in childhood. One legendary effort to draw attention to the problem of gender-based stereotyping in the context of children's toys was described as follows:

In 1989 the Barbie Liberation Organization was formed. Taking advantage of similarities in the voice hardware of *Teen Talk Barbie* and the *Talking Duke G.I. Joe* doll, er, "action figure," they absconded with several hundred of each and performed a stereotype-change operation on the lot. The surgery was no simple matter — circuit boards had to be trimmed, a capacitor moved, and a switch re-engineered. The press made it sound like an easy pop-and-switch operation, but this took some research and dedication The BLO returned the altered dolls to the toy store shelves, who then resold them to children who had to invent scenarios for Barbies who yelled "Vengeance is mine!" and G.I. Joes who daydreamed "Let's plan our dream wedding!"³²

29. I use the term 'broad' tongue-in-cheek, noting that broad originally meant pregnant cow, and that many of the most popular animal terms used to refer to women are the names of prey or domesticated animals. See Robert Baker, *Pricks and Chicks: A Plea for Persons*, in *PHILOSOPHY AND SEX*, (Robert Baker & Frederick Elliston eds., 1984) (providing the examples of chick, bird, fox, vixen, filly, and bitch).

30. *Rebecca West* in *THE MACMILLAN DICTIONARY OF QUOTATIONS 212* (John Daintith & Hazel Egerton eds., 2d ed. 1989) (1913).

31. See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* (2d ed. 1993). Several comments about this book are available at <http://www.press.uillinois.edu/pre95/0-252-06205-1.html> (last visited Oct. 24, 2004). Sandra Day O'Connor and Anne Coughlin subscribe to this view.

32. *Barbie Liberation*, at <http://sniggle.net/barbie.php> (last visited Jan. 21, 2005). See also Brigitte Greenberg, *The BLO — Barbie Liberation Organization — Strikes*, at <http://www.etext.org/Zines/UnitCircle/uc3/page10.html> (last visited Jan. 21, 2005).

After alterations, “[t]he ‘corrected’ G.I. Joe doll said things like ‘I love school. Don’t you?’ and ‘Let’s sing with the band tonight.’” The “liberated” Barbie said, among other things, “Dead men tell no lies.”³³ This must have been quite startling to the retail purchasers, to say the least.

Another classic illustration of gender differentiation is the Saturday Night Live commercial satire “Chess for Girls,”³⁴ which opens with a boy and girl playing ordinary chess. When the boy announces he has checkmate, the girl wails, “Chess is no fun!” and sweeps the pieces off the board in a fit of pique. An announcer intones, “Don’t worry, now there’s ‘Chess for Girls,’” and a chessboard appears that is filled with pink and flowery doll-like pieces, which one of the children observes smell like strawberries. A group of girls materializes, brushing the long beautiful hair of the queen, and prancing around with beautiful pony-like knights. After the boy complains, “Hey, you can’t move like that!” one girl retorts, “Shhh! You’ll wake the baby!” and points to the cradle on the chess board. Other chess pieces drive around in a convertible and relax at a beach house.³⁵ Whether this vignette made fun of sex stereotyping by toy makers, or actually mocked girls themselves, remains very much in the eye of the beholder.

Adult women are also offered pink and floral-laden alternatives to products that otherwise are viewed as male. For example, Style XP software, which adds artful design to the user interface of a desktop computer running Microsoft Windows XP, comes in two versions, one for “Men” and one for “Ladies.”³⁶ The writer James Wolcott wrote:

The sign of a true pomposity in the making is when a man begins quoting himself. Preening for posterity. I say “a man,” because women are far less prone to cite their previous remarks and serve them as leftovers. But certain types of male writers love to repeat themselves — the same type who’ll preface a comment with, “For the record, I . . .” As if there were a record

33. *Hacking Barbie with the Barbie Liberation Organization*, at <http://www.brillomag.net/No1/blo.htm> (last visited Jan. 21, 2005).

34. See *Saturday Night Live Archives of Skits of Commercials*, at <http://snltranscripts.jt.org/97/97h.phtml> (last visited Jan. 21, 2005).

35. For further discussion of this skit, see JUSTINE CASSELL & HENRY JENKINS, FROM BARBIE TO MORTAL KOMBAT: GENDER AND COMPUTER GAMES 2-3 (1998), available at <http://partners.nytimes.com/books/first/c/cassell-barbie.html>.

36. *NT Compatible: Style XP Ladies*, at <http://www.ntcompatible.com/story28060.html> (last visited Jan. 23, 2005); *TGT Software: Download of Style XP*, at <http://www.tgtsoft.com/download.php> (last visited Jan. 23, 2005); *A Whole Lotta Nothing: Chess for Girls!*, at http://a.wholelottanothing.org/2004/09/chess_for_girls.html (Sept. 3, 2004).

somewhere to which future generations would refer to find out what this particular wheezer said. "For the record, I never ordered the wine spritzer."³⁷

While women are favorably differentiated by Wolcott from men in this screed, he provides not only an example of sex stereotyping, but, in this author's experience, an egregiously unsupportable one.

Essentializing³⁸ female lawyers through detrimental acts of indiscriminate generalization is something that even profoundly

37. James Wolcott, *Instapundit in Stereo*, at http://jameswolcott.com/archives/2004/11/instapundit_in.php (Nov. 2, 2004).

38. Katharine T. Bartlett & Angela Harris, *Gender and Law: Theory, Doctrine, Commentary* (1998), at <http://academic.udayton.edu/gender/07unit/essent.htm>.

Essentialism . . . refers to a grab bag of different, sometimes overlapping, problems. Once [sic] is the problem of false universalisms, in which over-generalizations or unstated reference points implicitly attribute to all members of a group the characteristics of a dominant subset of that group A second, and related, problem of universalism often described as "essentialism" has to do with the applicability of Western feminism to other cultures A third meaning of the term "essentialism" is a form of reductionism by which the world is viewed through a single lens that reduces social relations to those aspects that support one "grand" theory. People who take this view believe that gender oppression is the most "fundamental" or "primary" oppression; all other forms of oppression are less central, or less universal, or dependent upon gender oppression. A frequent criticism of this view is that it wrongly minimizes the significance of oppression based on other factors such as race, sexuality, class, ethnicity, and religion. A fourth meaning of the term "essentialism" is selecting out only one possible source of a woman's identity such as her gender, race, class, or sexual preference and treating it as severable from the rest of her being. Women are never just women; they are lesbians, black women, Asian women, able-bodied straight women, poor, or middle-class women A fifth meaning of the term "essentialism" that appears not only in law itself but in some feminist critiques of law might be called the "naturalist" error. Within critical legal perspectives, to commit the naturalist error is to assume the existence of certain inherent or "natural" facts, rather than socially construed ones, on which law is or should be based. This error is replicated by feminists, some say, when they treat "women" as a self-explanatory category, often defined by biology A sixth meaning of the term "essentialism" points at a deeper problem, located in the process of categorization itself. Humans constantly put one another into mental categories; it seems to be an inescapable part of cognition itself. But every category is inevitably under-inclusive and over-inclusive. Every category is useful for some purposes and not for others Finally, a seventh connotation of the term "essentialism" points toward the philosophical movement known as "postmodernism." Postmodern theory challenges the notion that there is any objective reality "out there" in the world that can be perceived apart from our expectations and our past experience. It insists, instead, that one's experience of the world is always shaped by one's position in it.

Id. For a list of works that discuss essentialism in the realm of feminism, see KRISTIN SWITALA, *ESSENTIALISM IN FEMINISM*, VIRGINIA TECH CENTER FOR DIGITAL DISCLOSURE AND CULTURE, at <http://www.cddc.vt.edu/feminism/ess.html> (1999).

feminist attorneys sometimes inadvertently or instrumentally engage in,³⁹ despite the fact that doing so may be burdensome, and at times tremendously counterproductive.⁴⁰ In response, many feminist legal scholars are avid proponents of inclusiveness,⁴¹ which has a powerful and intuitive emotional appeal, but which simultaneously makes it difficult to articulate and support a clear and coherent vision of feminism. Inclusiveness is part of the very fiber of feminism,⁴² yet it creates within feminism many of the complications endemic to democracy.⁴³

39. *E.g.*, PHYLLIS CHESLER, *WOMAN'S INHUMANITY TO WOMAN* (2001). Phyllis Chesler discusses ways in which women engage in direct and indirect acts of aggression toward one another, arguing that sexism and misogyny are not strictly male attitudes (*id.*) and "that women — even feminist women — are also human beings who often share with men a lust for power over others, greed, envy, cruelty, and aggression." Miriam Greenspan, *When Women Injure Women*, *TIKKUN MAGAZINE*, May/June 2002 (book review), at http://www.tikkun.org/magazine/index.cfm/action/tikkun/mode/printer_friendly/issue/tik0205/article/020556.html (last visited Feb. 15, 2005).

40. See Barbara Stark, *Bottom Line Feminist Theory: The Dream of a Common Language*, 23 *HARV. WOMEN'S L.J.* 227, 227-29 (2000); Margaret Jane Radin, *Please Be Careful with Cultural Feminism*, 45 *STAN. L. REV.* 1567, 1568 (1993).

Among feminist scholars, there is a critique of cultural feminism going on which starts from this question: If you were lucky enough to be a dominant group and wanted to dominate society, and you had the power to fashion the language in which people could construct their own identity and self-conception and the ways in which they relate to other people, how would you construct a perfect subordinate group? Well, I think that you would make them cooperative, empathetic, nurturing of others, self-sacrificing, noncompetitive, and nonaggressive. The critique says that these characteristics that are attached to women may have been created under domination, and may need to be criticized rather than ensconced as the essence of women and uncritically praised. Uncritical acceptance of cultural feminism may play into a form of backlash.

Id.

41. See, *e.g.*, Carol Sanger, *Feminism and Disciplinary: The Curl of the Petals*, 27 *LOY. L.A. L. REV.* 225 (1993); Karena Shaw, *Feminist Futures: Contesting the Political*, 9 *TRANSNAT'L L. & CONTEMP. PROBS.* 569 (1999).

42. See, *e.g.*, National Council for Research on Women, *1998 Annual Conference: Transformation Through Research, Action, and Knowledge*, Roundtable Discussion: Where is Feminism's "Fourth Wave"?, at <http://www.ncrw.org/research/98conf8.htm> (Oct. 2, 1998). But see Mary Zeiss Stange, *The Political Intolerance of Academic Feminism*, *CHRON. HIGHER EDUC.*, June 21, 2002, available at <http://chronicle.com/free/v48/i41/41b01601.htm>; Nicole Brackman, *The Paradox of Contemporary Feminism*, at <http://www.torah.org/features/wperspective/feminism.html> (last visited Oct. 22, 2004) ("Feminism, like the socialism of the Labor Zionists who founded Israel, is premised on the concept — an astoundingly anti-democratic one — that the masses are ignorant of their true condition and need their 'consciousness raised' by a vanguard intellectual elite.").

43. See, *e.g.*, Susan Moller Okin, *Multiculturalism and Feminism: No Simple Question, No Simple Answers*, in *MINORITIES WITHIN MINORITIES* (Avigail Eisenberg & Jeff Spinner-Halev eds., 2004), available at <http://64.233.179.104/search?q=cache:c5MGNuP71gwJ:www.law.nyu.edu/clpptprogram2003/readings/okin.pdf+feminism++democratic+ideals&hl=en> (last visited Feb. 25, 2005).

My own concerns about inclusiveness tend to be experiential rather than intellectual. During my freshman year of college, I participated in a feminist event denominated 'Take Back the Night.' That first year, it was an all women's march through the local town, followed by an energetic rally intended to draw attention to the problem of sexual assault and challenge the societal misconception of rape as primarily the problem of women who foolishly strode the evening streets alone. Almost all of the 'Take Back the Night' participants identified themselves as feminists. I found it a joyful and empowering experience to walk around in the dark, feeling perfectly safe, with a few current friends and a large group of unknown women, who signaled that they were potential friends by their mere presence at the march.

Three years later, at my fourth consecutive 'Take Back the Night' event, both my circle of feminist friends and the focus of the event had broadened substantially. Now, in addition to addressing the issue of rape, the chants, posters, and rally speakers addressed issues such as housing and employment discrimination that were based not only on gender, but also on age, race, and sexual orientation. Rather than the unruly, anarchic unity I remembered from previous 'Take Back the Night' marches, the ethos was more one of networking than of revolution. Marchers sorted themselves into sign-wielding interest groups, physically representing the community based entities that were participating, and visually identifying themselves as, for example, homeless shelter volunteers, food bank volunteers, nurses from a local hospital, and the proponents of a local day care collective. The march was larger and better organized than it had ever been, and it surely benefitted in many ways from the energy and engagements of so many diverse but complementary social justice based agendas. However, the primary focus and central message of previous marches, women uniting to 'take back the night' from sexual predators, was diffused, and on an emotional level it felt somewhat less powerful in consequence.

The conceptual meaning of feminism can be considerably more wide-ranging than the interest groups participating in that particular feminist-oriented annual event.⁴⁴ When "Second Lady" Lynne Cheney was asked how she felt about being called a "feminist intellectual" by Elaine Showalter,⁴⁵ she replied:

44. See, e.g., Catherine Redfern, *Pick 'n' Mix Feminism*, at http://www.thefword.org.k/features/2001/05/pick_n_mix_feminism (last updated May 16, 2001).

45. See Elaine Showalter, *Lynne Cheney, Feminist Intellectual?*, CHRON. HIGHER EDUC., Sept. 29, 2000, at B11-12, available at <http://chronicle.com/free/v47/i05/05b01>

I don't mind being labeled a "feminist intellectual" as long as I get a chance to define what I mean by feminism, which has to do with recovering the story of what women have accomplished and lived through, not just in our society but around the world. If it means being convinced that women should have equal opportunities to achieve in their lives, if it means believing firmly that women should be able to make choices about family and career, if that is what it means, then I am happy to be called a feminist. If, on the other hand, it means the whole menu of orthodoxies that have become attached to the feminist movement — i.e., you can't be pro-life; you can't like Clarence Thomas; you can't be a Republican — then it is an inaccurate description.⁴⁶

Lynne Cheney was a founder of the Washington-based Independent Women's Forum (IWF), an organization established in 1991 by a number of prominent right-wing Republican women to act as a counterpoint to what they called the "radical feminism" of the National Organization for Women (NOW).⁴⁷ IWF "seeks to combat the women-as-victim, pro-big-government ideology of radical feminism,"⁴⁸ opposes affirmative action,⁴⁹ and works to "educate women on the benefits of the free market and the danger of big government."⁵⁰ Ironically, in addition to the host of nefarious evil deeds cataloged above, feminists have been accused of "shamelessly adopt[ing] Republican rhetoric about the vital role women play in families and communities and how these issues are more than women's issues."⁵¹ If Lynne Cheney becomes culturally viewed as a feminist, maybe the rampant hyperbolic castigation of feminism as an unremittingly malevolent scourge will subside. At the same

101.htm; see generally *Critical Theory: Elaine Showalter*, at <http://www.bedfordsmartins.com/litlinks/critical/showalter.htm> (last visited Oct. 22, 2004); Dr. Tom Fish & Jennifer Perkins, *Elaine Showalter*, at <http://cc.cumberlandcollege.edu/acad/english/literitweb/bios/eshowalter.htm> (last updated July 30, 1999).

46. *The Truth & Lynne Cheney*, WOMEN'S QUARTERLY, Spring 2001, at 10, available at http://www.findarticles.com/p/articles/mi_m0IUK/is_2001_Spring/ai_75453032/pg_2.

47. See *Independent Women's Forum*, at <http://www.iwf.org> (last visited Jan. 23, 2005); see also *People for the American Way: Independent Women's Forum*, at <http://www.iwf.org/pfaw/general/default.aspx?oid=11625> (last visited Jan. 23, 2005).

48. *Independent Women's Forum: About IWF*, at http://www.iwf.org/about_iwf/default.asp (last visited Jan. 23, 2005).

49. *Independent Women's Forum: Issues*, at http://www.iwf.org/issues/issues_list.asp?Type=90 (last visited Jan. 23, 2005).

50. *Id.*

51. Janice Shaw Crause, *Feminists Flunk Bush Administration*, NAT. REV. ONLINE (Aug. 27, 2003), at <http://www.cwfa.org/printerfriendly.asp?id=4530&department=bl&categoryid=commentary>.

time, however, if feminism is such an inclusive notion that it can embrace a pro-life Republican woman who likes Clarence Thomas, and who gets to define feminism for herself,⁵² then as a practical matter the concept has very little meaning or appeal to this author.

At least to some degree, the issue of inclusiveness poses what Margaret Jane Radin has described as the “double bind,” the idea that within structures of domination, every seemingly progressive step forward can also provoke opposing, negative consequences.⁵³ Feminism can be reprimanded for excluding or marginalizing groups of women based on race, class, religion, sexual orientation, or other characteristics because such behaviors are criticized when engaged in by patriarchal power structures. Simultaneously, however, feminists are rebuked for practicing broad inclusiveness to an extent that causes the very core concepts of feminism to lose their clarity and effective purpose.⁵⁴

Feminism does not have a universally recognized governing body, and ‘feminism’ is not a brand or trademark with a fixed social or commercial meaning. Investigations into what feminism is, or should be, have fueled debates and created rich bodies of varied scholarship.⁵⁵ One commentator, after describing herself as a “pick ‘n’ mix feminist” cataloged the attributes of six varieties of feminism she had observed (radical feminism, goddess feminism, second wave

52. See Letter to the Editor, *Portia is a Forum for Perspectives From All Women*, Dec. 9, 1998, at <http://www.yaledailynews.com/article.asp?AID=235>:

I was saddened to see the recent column in the Yale Daily News condemning Portia as “Fake Feminism for the Yale Woman” . . . However, I will not respond to the personal attacks levied against me and the other staffers because I truly believe EVERY woman is entitled to her own opinion — and to her own definition of feminism. Personally, I believe that there is no such thing as “fake feminism.” True Feminism should be about expanding a woman’s choices — not dictating them. Furthermore, any woman or man, conservative or liberal, who believes in sexual equality is a feminist according to my inclusive definition.

Id.

53. Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699 (1990).

54. “We have to remember that when we vote for our president, a commander in chief, we’re voting for the father of our nation.” Sharon Stone quotation, *Science and Politics*, at <http://sciencepolitics.blogspot.com/2004/10/links-ignorance-faith-fear-of.html> (last visited Jan. 23, 2005). The statement “when actresses try to play the role of feminist,” was made in response to Sharon Stone’s quotation. Ann Althouse, *Althouse*, Oct. 25, 2004, at http://althouse.blogspot.com/2004_10_24_althouse_archive.html.

55. See, e.g., Katherine T. Bartlett, *Cracking Foundations as Feminist Method*, 8 AM. U.J. GENDER SOC. POL’Y & L. 31 (2000); Sanger, *supra* note 41. For additional examples of the variety in feminist scholarship, the reader may wish to consult works by Anita Bernstein, Mary Anne Case, Martha Chamallas, Andrea Dworkin, Martha Ertman, Martha Fineman, Katharine Franke, Catherine MacKinnon, Martha Minow, Martha Nussbaum, and Joan Williams.

feminism, third wave feminism, new/power feminism, pop-feminism), mentioned post-feminism, and lamented her failure to discuss womanism, eco-feminism, and socialist-feminism.⁵⁶ The multiplicity of views and interests associated with feminism creates a medley that is not always harmonious. Questions such as whether, for example, feminism and strong religious beliefs can harmoniously co-exist are perplexing, especially given the hostility expressed by many religious leaders toward feminists.⁵⁷ Yet as one commentator has observed, it is possible to actually see modern feminism as a logical development of Christianity.⁵⁸ This refers not to the kind of Christianity with the patriarchal, war-like God, described by male-dominated hierarchies of Catholicism and Protestantism, but one reflecting foundational values of the women's movement arguably inherited from Christianity such as compassion, inclusiveness, and pacifism.⁵⁹

Most feminists correctly view ideological litmus testing as abhorrent. They view debate and disagreement within the feminist movement as democratic and healthy, and rightly so. The problem with an ethos of inclusiveness, however, is that it complicates the sometimes necessary task of articulating the core principles of feminism and makes it difficult to identify like-minded colleagues. One can generally assume that the women who attend gatherings like a 'Take Back the Night' march or the 'Anita Hill Wake-Up Call' party⁶⁰ have feminist inclinations. It is a little trickier to divine the beliefs of students, neighbors, and others one encounters in more neutral contexts, and it will remain so until feminists devise identifying code words, signifying symbology, or a secret handshake.

What it means to be a feminist is fuzzy enough when only self-defined feminists are attempting to articulate taxonomies of feminist beliefs. The terrain becomes even more complicated when people hostile to the concept of feminism are permitted to use feminism's predisposition toward inclusiveness against feminists. Most problematic is the fact that non-feminists continue a long tradition of sexist generalizations and derogatory stereotypes about women lawyers that undermine feminists' status as competent

56. Redfern, *supra* note 44.

57. *Id.*; see also *supra* notes 9-10 and accompanying text.

58. Notes from Ulro: *Feminism and Christianity*, at <http://ulro.net/topics/religion/30.php> (last modified Feb. 3, 2004).

59. *Id.*

60. The 'Anita Hill Wake-Up Call' is a feminist gathering that convenes every October in Columbia, South Carolina, to commemorate Anita Hill's testimony during Supreme Court Justice Clarence Thomas's confirmation hearing.

attorneys. At a minimum, feminism has always been geared toward increasing the personal and professional autonomy of women and giving sexist oppressors less material to work with when they want to write off women attorneys as 'some dumb girls.'

IV. OVERCOMING EXCLUSION

In 1638, an extraordinary woman named Margaret Brent left England, arrived in what is now Maryland, obtained a land grant, engaged in various business ventures and worked as an attorney,⁶¹ making her the first female lawyer in what would eventually become the United States.⁶² Margaret Brent retired from the practice of law in 1657, and most records suggest hundreds of years passed before another woman was officially licensed to practice law in this country.⁶³

More than two centuries later, Arabella Babb Mansfield studied law with her husband John.⁶⁴ They both passed the bar

61. Lois Green Carr, *Margaret Brent*, in 1 NOTABLE AMERICAN WOMEN 1607-1950: A BIOGRAPHICAL DICTIONARY 236 (Edward T. James et al. eds., 1971) [hereinafter Carr, in NOTABLE AMERICAN WOMEN], available at <http://www.awomanaweek.com/brent.htm>; see also ELIZABETH ANTHONY DEXTER, COLONIAL WOMEN OF AFFAIRS (Augustus M. Kelley, reprint 1972) (1924); James A. Henrietta, *Margaret Brent: A Woman of Property*, in AMERICA'S HISTORY (3d ed. 1997), available at <http://earlyamerica.com/review/1998/brent.html> (last visited Oct. 19, 2004); MARY E.W. RAMEY, CHRONICLES OF MISTRESS MARGARET BRENT (1915); Ann Baker, *Margaret Brent* (ca.1601-ca.1671) (Maryland State Archives, 1997), at <http://www.mdarchives.state.md.us/msa/speccol/sc3500/sc3520/002100/002177/html/brochure.html>; Lois Green Carr, *Margaret Brent — A Brief History* (Maryland State Archives, 1997), at <http://www.mdarchives.state.md.us/msa/speccol/sc3500/sc3520/002100/002177/html/mbrent2.html> (last updated Feb. 7, 2002).

62. Carr, in NOTABLE AMERICAN WOMEN, *supra* note 61, at 236.

63. Frances Mitchell Ross, *Reforming the Bar: Women and the Arkansas Legal Profession*, 20 U. ARK. LITTLE ROCK L.J. 869 (1998).

Following her 1638 arrival in St. Mary's Parish, Maryland, Gentleman Margaret Brent, as she was frequently addressed both in person and in colonial court records, "figured in one hundred and twenty-four court cases in eight years" Significantly, the Maryland Assembly also recognized her as Lord Baltimore's attorney. Gentleman Margaret Brent carved out an unusual niche for herself as a female with a high public profile. A few other women after Brent's time are known to have pleaded their own cases in court, one even to the United States Supreme Court. Others may have practiced at the county level. Not until 1869, however, was another woman known to have been recognized as an attorney.

Id. (quoting KAREN BERGER MORELLO, THE INVISIBLE BAR, THE WOMEN LAWYER IN AMERICA 1638 TO THE PRESENT 6 (1986)). The American Bar Association presents a few extraordinary modern women lawyers with Margaret Brent Awards each year at the organization's annual meeting. *American Bar Association Commission on Women in the Profession*, at <http://www.abanet.org/women/awards.html> (last visited Oct. 19, 2004).

64. DAWN BRADLEY BERRY, THE 50 MOST INFLUENTIAL WOMEN IN AMERICAN LAW 5-7 (1996).

exam and were admitted to the Iowa Bar in 1869.⁶⁵ She never actually practiced law, however, preferring to teach college history, and eventually became a college administrator.⁶⁶ Many lawyers in practice today would have little difficulty understanding why she might have found academia a more attractive option, but this choice ended her path-breaking at the very starting point of a traditional legal career, leaving the Iowa courthouse steps untrodden by female lawyer feet.

Also in 1869, Myra Bradwell passed the Illinois Bar Exam with honors, but her application for admission to the State Bar was refused because she was female.⁶⁷ This refusal was upheld by the U.S. Supreme Court, which issued an opinion declaring:

We agree . . . that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them.⁶⁸

A concurrence stated in pertinent part, "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."⁶⁹

65. *Id.*

66. *Id.*; *Arabella (Belle) A. (Babb) Mansfield — Timeline*, at <http://www.law.stanford.edu/library/wlhp/papers/BelleMansfieldTimeline.pdf> (using information from Louis Haselmayer, *Belle A. Mansfield*, 55 *WOMEN LAW. J.* 46 (1969)) (last visited Oct. 19, 2004); see also Tom Longden, *Famous Iowans: Arabella Mansfield*, at <http://desmoinesregister.com/extras/iowans/mansfield.html> (last visited Oct. 19, 2004); Iowa Women's Hall of Fame: *Arabella Mansfield*, at <http://www.state.ia.us/government/dhr/sw/iafame-mansfield.html> (last visited Oct. 19, 2004).

67. BERRY, *supra* note 64, at 27-28.

68. *Bradwell v. State of Illinois*, 83 U.S. 130, 139 (1872).

69. *Id.* at 141.

Man is, or should be, woman's protector and defender The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state [A] married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him [This renders] a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counselor The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.

Yet somehow Myra Bradwell overcame her natural and proper timidity and delicacy sufficiently to found and edit *The Chicago Legal News*, the most successful legal publication of its time.⁷⁰ Despite her heroic efforts on behalf of other women as well as herself, and her ultimate admission to the Illinois Bar in 1890,⁷¹ it took more than fifty years for the vile vestiges of the *Bradwell* decision to wear off enough for women to gain the right to practice law in every state.⁷²

A year after the *Bradwell* Supreme Court abomination, Ada H. Kepley graduated from the Union College of Law in Chicago, becoming the first woman lawyer to graduate from a law school.⁷³ In 1873, after obtaining a law degree from the District of Columbia Law School, Belva Ann Lockwood was denied the opportunity to litigate a patent law case because the U.S. Court of Claims asserted that a woman was "without legal capacity to take the office of attorney."⁷⁴ The court expressed concern about "the eventual danger that the wife of a judge would be permitted to argue before him, inviting corruption of all kinds, and that a married woman attorney could engage in misconduct, misapply funds, or commit fraud for which her husband would be liable at common law."⁷⁵ This view endured until 1879, when "The Lockwood Bill" became law and female attorneys were legally entitled to practice in the federal courts.⁷⁶ The same year, Lockwood became the first woman to argue before the U.S. Supreme Court,⁷⁷

Id. at 141-42 (Bradley, J., concurring).

70. BERRY, *supra* note 64, at 26-32.

71. *Id.* at 31-32.

72. Kenneth Walter Mack, *A Social History of Everyday Practice: Sadie T.M. Alexander and the Incorporation of Black Women into the American Legal Profession, 1925-1960*, 87 CORNELL L. REV. 1405, 1413 (2002).

The Supreme Court's decision in Myra Bradwell's case forced women to struggle for admission state-by-state, petitioning courts and lobbying state legislatures for their inclusion in bar admission laws. Their efforts were gradually rewarded over the next fifty years, and by the 1920s . . . women had secured the right to practice in every state in the Union.

Id. at 1413-14; see also RONALD CHESTER, *UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA* 8 (1985).

73. Ann-Marie Imbornoni et al., *Famous Firsts by American Women*, at <http://www.infoplease.com/spot/womensfirsts1.html> (last visited Oct. 19, 2004).

74. Barbara Babcock, *Belva Ann Lockwood: For Peace, Justice, and President* (May 13, 1997), at <http://www.stanford.edu/group/WLHP/papers/lockwood.htm>.

75. *Id.*

76. BERRY, *supra* note 64, at 22.

77. *National Women's History Museum: Suggested Itinerary*, at <http://www.nmwh.org/home/footsteps.htm> (last visited Oct. 19, 2004); see also Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689, 1692-93 (1998) (reviewing VIRGINIA DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998)).

and in the course of a very successful career as an attorney, she somehow miraculously avoided both engaging in legal misconduct and marrying any of the Supreme Court Justices.

Despite Lockwood's gains, *Bradwell* emboldened state legislatures to bar women from legal practice in state courts. For example, in 1873 Arkansas passed a law stating that only male citizens of age twenty-one and of good moral character, with "the requisite qualifications of learning and ability" could practice in Arkansas courts.⁷⁸ This law was used to prohibit the admission of women to the Arkansas bar until 1917.⁷⁹

Meanwhile, in 1875 the Supreme Court of Wisconsin denied women's petitions to practice before it, stating, "It would be . . . shocking to man's reverence for womanhood and faith in woman . . . that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice."⁸⁰ The court then listed a string of subjects that could arise in court that were expressly deemed wholly unfit for the attention of women, including rape, pregnancy, prostitution, abortion, and divorce.⁸¹

Some progress, however, emerged a few years later. In 1879, Article XX, Section 18 of the California Constitution was amended to read, "No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession."⁸² This provision created an enforceable right for women to be admitted to the California Bar, exactly as it was intended to do, even when men interpreted it.⁸³

In 1886, New York admitted its first woman to its State Bar, Kate Stoneman.⁸⁴ Only after passing the New York State bar

78. Ross, *supra* note 63, at 874. "A later bill to amend the law by omitting the word 'male' failed by one vote and until 1917, women were prohibited from admission to the bar of Arkansas." *Id.*

79. *Id.*

80. In *Matter of Motion to Admit Goodell*, 39 Wis. 232, 245-46 (1875).

81. *Id.* The court elaborated on the legal issues it found inappropriate for women: [A]ll the unclean issues, all the collateral questions of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, legitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene publications, libel and slander of sex, impotence, divorce: all the nameless catalogue of indecencies, *la chronique scandaleuse* of all the vices and all the infirmities of all society, with which the profession has to deal, and which go towards filling judicial reports which must be read for accurate knowledge of the law.

Id. at 246.

82. CAL. CONST. of 1879, Art. XX § 18.

83. Barbara Allen Babcock, *Western Women Lawyers*, 45 STAN. L. REV. 2179, 2181-82 (1993).

84. Miriam Goldman Cedarbaum, *Women on the Federal Bench*, 73 B.U. L. REV. 39, 39 (1993); see also *The Kate Stoneman Visiting Professorship of Law and Democracy*

examination and convincing the Governor, Secretary of State, and State Supreme Court that women should be allowed to practice law did Stoneman bother to enroll in law school, from which she graduated in 1898.⁸⁵ She had begun a college teaching career in 1866 and apparently returned to teaching after obtaining her Bachelor of Laws from the Albany Law School.⁸⁶ Like Arabella Babb Mansfield, she helped pave the way for other women to practice law but ended her own road-building outside the gates of mainstream legal practice.

In 1918 South Carolina passed legislation admitting women to the state bar, and James M. "Miss Jim" Perry was duly admitted in May of that year.⁸⁷ That same year the University of South Carolina School of Law graduated its first female student, Claudia James Sullivan Boyd.⁸⁸ She obtained admission to the law school only after braving a faculty meeting and explaining to a roomful of law professors that she was "white, of good character and [had] the proper credits," and that the law permitted women to register.⁸⁹

It was 1923 before the first woman, Elizabeth N. Tompkins, graduated from the University of Virginia School of Law and became the first woman admitted to the Virginia State Bar.⁹⁰ This was also the year that Delaware, the final holdout among

at *Albany Law School*, at <http://www.als.edu/faculty/editor.cfm?ID=335> (last visited Feb. 15, 2005).

Katherine "Kate" Stoneman became the first woman admitted to practice law in New York, paving the way for thousands who followed. She did so against enormous odds; supporting herself as a teacher, she worked nights, weekends, and summers as a clerk to an Albany lawyer until she graduated in 1898. She was the first woman to pass the New York State Bar Exam, but her application to join the bar was rejected because of her gender. She then launched a successful campaign to amend the Code of Civil Procedure to permit the admission of qualified applicants without regard to sex or race. She was a leading activist in three major reform movements of her day: suffrage, temperance, and world peace.

Id.; see also *Town of Busti History: The Stoneman Family*, at <http://www.townofbusti.com/stoneman.html> (last visited Oct. 19, 2004) [hereinafter *Busti History*].

85. *Busti History*, *supra* note 84.

86. *Id.*

87. RUTH WILLIAMS CUPP, PORTIA STEPS UP TO THE BAR: THE FIRST WOMEN LAWYERS OF SOUTH CAROLINA 15 (2003).

88. *Id.* at 17.

89. *Id.* at 18.

90. *Breaking and Making Tradition, Women at the University of Virginia: Graduate and Professional Schools*, pt. 1, at http://www.lib.virginia.edu/speccol/exhibits/women/grad_prof1.html (last modified Apr. 22, 2004).

states, finally allowed women admission to its bar and permitted them to practice before its courts.⁹¹

V. SEXISM'S INVISIBLE HAND

Despite innate intelligence, inherent loveliness, and often dazzling accomplishments, in many life contexts women are less visible than men.⁹² This lack of visibility is sometimes calculated, because we live in a world where women continue to be viewed (when viewed at all) less favorably than men. Consider, for example, why it is that the world knows the phenomenally successful author of the Harry Potter novels as "J.K." Rowling. Rowling's publisher, believing a book penned by a writer of indeterminate gender was more marketable than one written by a woman, originally tried to mask the fact that Rowling is a woman by using her initials, J.K., rather than her given first name, Joanne, to indicate authorship of the Harry Potter books.⁹³

Other times the source of women's invisibility is slightly mysterious. On a plane flying into Columbia, South Carolina, where I live, a self described "Assistant District Attorney from the West Coast" wearing sweat pants and a tee shirt explained that she was traveling to my fair city for advanced training courses at the National Advocacy Center. After relaying this exact destination information she paused for a moment and added, a bit patronizingly, "But you probably don't know what that is, do you?"

91. Susan M. Hartmann, *Book Review: Virginia G. Drachman, Sisters in Law: Women Lawyers in Modern American History*, 19 LAW & HIST. REV. 464, 464 (2001) ("Beginning in 1869 in Iowa, women won the right to practice law state by state either by court decision or by legislative action until 1923 when Delaware became the last to admit women to the bar.").

92. For example, consider the Internet, about which it has been written:

An initial consideration of the demographics of blog authors reveals an apparent paradox. Quantitative studies report as many (or more, depending on what one counts as a blog) female as male blog authors, and as many (or more) young people as adults . . . suggesting a diverse population of bloggers as regards gender and age representation. At the same time, as will be shown, contemporary discourses about weblogs, such as those propagated through the mainstream media, in scholarly communication, and in weblogs themselves, tend to disproportionately feature adult, male bloggers.

Susan C. Herring et al., *Women and Children Last: The Discursive Construction of Weblogs: An Apparent Paradox*, at http://blog.lib.umn.edu/blogosphere/women_and_children.html (last visited Oct. 19, 2004); see also *Learning the Lessons of Nixon*, at <http://www.cadence90.com/wp/index.php?p=2836> (last visited Jan. 18, 2005).

93. *The Magic Behind Harry Potter*, CBS News, Jun. 15, 2003, at <http://www.cbsnews.com/stories/2003/06/12/60minutes/main558428.shtml>; *Quick Quotes: Interview with J.K. Rowling*, Sept. 12, 1999, at <http://www.quick-quote-quill.org/articles/1999/0999-cbsnews-stahl.html>.

For the reader's edification, the National Advocacy Center⁹⁴ is situated on the campus of the University of South Carolina, where I teach at the Law School. I have previously lamented my own failure to look like a law professor,⁹⁵ and obviously have not made any progress in that department. Yet I looked at least as much like an attorney as she did, arguably even more so since I was completely exhausted, wearing a suit, and toting a heavy briefcase.

The title of this section (Sexism's Invisible Hand) arises from a story related by a female colleague who regularly attended meetings of scientists at which few women were present, and the number of women permitted to participate was nonexistent, until one day when a new female attendee was called upon during a discussion session. Other women made a point of congratulating her afterwards, noting that no other woman had been called on nor allowed to speak to this particular male dominated assemblage before. The woman related that her raised hand had been invisible to men in power for most of her career as well, but had miraculously 'materialized' after she won a Nobel Prize.

In cyberspace, even without women's less-important-looking-than-male bodies obscuring them, their 'e-female' presence is less notable. In part, this simply reflects practices in real space with respect to news reporting and perceptions of newsworthiness.⁹⁶ Additionally, despite evidence that women blog (write web logs) at least as frequently as men, male bloggers are much more visible.⁹⁷ One group of researchers theorizes that this is because 'filter' blogs are produced mostly by adult males.⁹⁸ They assert that:

[B]y privileging filter blogs and thereby implicitly evaluating the activities of adult males as more interesting, important and/or newsworthy than those of other blog authors, public discourses about weblogs marginalize the activities of women and teen bloggers, thereby indirectly reproducing societal

94. See *NDAAC Training at the National Advocacy Center*, at http://www.ndaa-apri.org/education/nac_index.html (last visited Oct. 22, 2004).

95. Ann Bartow, *Still Not Behaving Like Gentlemen*, 49 U. KAN. L. REV. 809, 827-28 (2001).

96. *FAIR Action Alert: Women Have Not Taken Over the News*, at <http://www.fair.org/activism/tv-guide-women.html> (last visited Feb. 15, 2005); *FAIR's Women's Desk*, at <http://www.fair.org/womens-desk.html> (last visited Feb. 15, 2005); *The Online News Hour — Cable News Wars: Content Analysis*, at <http://www.pbs.org/newshour/media/cablenews/textonly.html> (last visited Oct. 19, 2004) ("Women accounted for less than 25 percent of guests on each of the three networks.").

97. Herring et al., *supra* note 92.

98. *Id.*

sexism and ageism, and misrepresenting the fundamental nature of the weblog phenomenon.⁹⁹

Contexts in which women are perceptible, and even sought after, on the Internet tend to be those that facilitate advertising, product sales, and the collection of personal information.¹⁰⁰

While women are invisible in some environments, they are viewed with significant distortion in others. Media figure Rush Limbaugh, in commenting on the April 25, 2004 March for Women's Lives in Washington, D.C.¹⁰¹ stated that "[s]ome of these babes, I'm telling you, like the sexual harassment crowd. They're out there protesting what they actually wish would happen to them sometimes."¹⁰²

Supreme Court Justice Antonin Scalia cannot simply disagree with Justice Sandra Day O'Connor; he has to belittle her as well. As one Court observer noted, "Justice O'Connor is the most frequent target of the 'stupid argument' treatment As one experienced Supreme Court practitioner put it . . . Scalia's "'Sandy, you dumb broad . . ." opinions have been masterpieces of contemptuous

99. *Id.*

100. See, e.g., Ann Bartow, *Our Data, Ourselves: Privacy, Propertization, and Gender*, 34 U.S.F.L. REV. 633 (2000).

101. See *National Organization for Women: More Than a Million Marched. Now Let's Get to Work!*, at <http://march.now.org/> (last visited Oct. 19, 2004).

102. *Meet the New Rush, Same as the Old Rush*, at <http://mediamatters.org/items/200405020008> (May 2, 2004); see also *Can You Say "Hypocrite"?: Limbaugh Lectured Rather on "Sexist Comment,"* at <http://mediamatters.org/items/200409170006> (Sept. 17, 2004). Astonishingly, Rush Limbaugh accused Dan Rather of making a sexist comment. *Id.* On his radio program, Limbaugh stated:

Let's listen to Dan Rather talking to Marian Knox on *60 Minutes II* last night. Rather says she spent more than two decades keeping pilots and officers in line at – what the hell is that? Secretary kept pilots and officers in line? That's a little sexist comment if you ask me.

Id.

Furthermore, Limbaugh has admitted that he "laughed [him]self to tears" when it was documented that he stated that "women 'actually wish' for sexual harassment" and was documented to have "used the term 'femi-Nazis' eight times between March 15 and April 29." *Id.* Making an absurd connection between several recent appointments of women to chief of police positions and the Abu Ghraib Iraqi prisoner abuse scandal, Limbaugh stated that "[i]f we've got four new female police chiefs out there, then I guess we can watch out for some naked pyramids among prisoners in these new jailhouses that these women ran, because we had a woman running the prison in Abu Grab [sic]." *Id.* Limbaugh has also admitted that "[H]is 'pet name' for the National Organization for Women (NOW) [is] 'National Association of Gals' (his acronym: 'NAG'). Limbaugh claimed that the 'militant feminists' who make up the 'NAGs' 'aren't determining who wins elections. White men are.'" *Id.* In response to the "false rumor of Senator John Kerry's alleged affair with journalist Alexandra Polier . . . [Limbaugh] advised Kerry to 'keep that babe in Africa.'" *Id.*

nastiness for more than a decade.”¹⁰³ I suppose we can at least feel grateful that Justice Scalia has not yet explicitly accused Justice O'Connor of experiencing hormonal imbalances.

Early in his career, Justice Scalia worked as a law professor, and I, for one, am relieved never to have been his student. To this day, aspiring female attorneys must endure the doubtlessly oppressive classrooms of law professors like Kingsley Browne, who believes that women are, by nature and design, inherently intellectually inferior to men.¹⁰⁴ One wonders if he recommends study aids with titles like “Great Thoughts Made Plain for Young Ladies”¹⁰⁵ to his female students who request academic assistance.

Certain purportedly female characteristics are observable or veiled as a consequence of societal expectations. Women are assumed not to engage in the bad behaviors that are apparently anticipated from men. In war zones, men who do not understand that women are perfectly capable of bearing arms and building bombs might tend to have shortened life expectancies. Yet women are not expected to be terrorists or suicide bombers, and when they do engage in violent acts of self-immolation they are often described as having been ‘used’ by men.¹⁰⁶ Women are also not

103. Tim Grieve, *Antonin Scalia, Self-Made Martyr*, at <http://www.salon.com/news/feature/2004/04/02/scalia/print.html> (Apr. 2, 2004).

[I]t's hard to imagine that Scalia's brow-beating has made O'Connor more inclined to vote with him, particularly as Scalia's dissents veer, as they sometimes do, perilously close to the realm of ad hominem attacks. In 1989, for example, while advocating the reversal of *Roe vs. Wade*, Scalia accused O'Connor of results-oriented judging, said her assertions could not be taken seriously, and closed by stating that O'Connor's efforts were “simply irrational.”

Id.

104. Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap*, 37 ARIZ. L. REV. 971 (1995); Kingsley R. Browne, *Women at War: An Evolutionary Perspective*, 49 BUFF. L. REV. 51 (2001); see also STEVEN E. RHOADS, *TAKING SEX DIFFERENCES SERIOUSLY* (2004).

105. MICHEL FABER, *THE CRIMSON PETAL AND THE WHITE* 86 (2002).

106. See generally Libby Copeland, *Female Suicide Bombers: The New Factor in Mideast's Deadly Equation*, WASH. POST, Apr. 27, 2002, at C01, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A57052-2002Apr26¬Found=true>; Stephanie Shemin, *Wrongheadedness of Female Suicide Bombers*, CHI. TRIB., June 18, 2002, available at http://www.cfr.org/pub4621/stephanie_shemin/wrongheadedness_of_female_suicide_bombers.php (asserting that “female suicide bombers are fighting for more than just national liberation; they are fighting for gender liberation as well”); Anne Applebaum, *Girl Suicide Bombers*, at <http://slate.msn.com/?id=2063954> (Apr. 2, 2002); Phyllis Chesler, *Forced Female Suicide*, at <http://www.frontpagemag.com/Articles/ReadArticle.asp?ID=11855> (Jan. 22, 2004) (“[E]vidence also suggests that the Palestinians have created yet another form of Arab honor killing . . . [R]eports have [indicated that] Palestinian girls and women [have been] recruited, seduced, and trapped, by older male terrorists in very woman-specific ways”); Richard Esposito et al., *Terror Threats to U.S. Cities Reported: U.S. Intelligence Learn of Possible Threats to New York*

deemed likely to torture prisoners.¹⁰⁷ We are not expected to use foul language,¹⁰⁸ though it is countenanced that we will be highly

and Other Cities, at <http://abcnews.go.com/sections/us/story?id=90132&page=1> (Dec. 19, 2003) (noting possible threat of “female suicide bomber” and suggesting that the gender of the potential bomber is notable and important); *Female Suicide Bombers Kill Six in Moscow*, at <http://www.smh.com.au/articles/2003/12/10/1070732240058.html> (Dec. 10, 2003); Lawrence Uzzell, *Profile of a Female Suicide Bomber*, at http://www.james.town.org/publications_details.php?volume_id=396&issue_id=2908&article_id=23533 (Feb. 11, 2004) (“The phenomenon of women suicide bombers is one of the most poorly understood of the current Chechen war – mainly because it is such a genuine novelty.”); Toby Westerman, *Cheerleader for Female Suicide Bombers*, at http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=26261 (Jan. 31, 2002).

107. Ta-Nehisi Coates, *She Held the Leash: G.I. Jane in the Torture Room*, at <http://www.villagevoice.com/issues/0419/coates.php> (May 10, 2004); Angela Fiori, *The Feminist Road to Abu Ghraib*, at <http://www.lewrockwell.com/orig/fiori4.html> (May 11, 2004); Kelley Beaucar Vlahos, *Pfc. England: Symbol of Policy Gone Wrong?*, at http://www.foxnews.com/printer_friendly_story/0,3566,123011,00.html (June 20, 2004); Cathy Hong, *How Could Women Do That?*, at http://archive.salon.com/mwt/feature/2004/05/07/abuse_gender (May 7, 2004). *But see Anne Coulter Blames Abu Ghraib on Feminism*, at <http://www.nauseamanifesto.com/modules.php?name=News&file=article&sid=2850> (May 21, 2004).

I think the other point that no one is making about the abuse photos is just the disproportionate number of women involved, including a girl general running the entire operation.

I mean, this is lesson, you know, one million and 47 on why women shouldn't be in the military. In addition to not being able to carry even a medium-sized backpack, women are too vicious.

Media Matters for America, *The Buck Stops Where?*, at <http://mediamatters.org/items/200405070003> (posted May 6, 2004) (quoting Anne Coulter to support the proposition that “[a]mid calls for Secretary of Defense Donald Rumsfeld’s removal over allegations of the abuse of Iraqi prisoners by U.S. military personnel, some conservative pundits have their own ideas of who is responsible. *Media Matters for America* has identified at least four groups who have been blamed: women, feminists, Muslims, and the academic left”); *see also, e.g., Bias Against Women in the Military* (May 7, 2004), at http://talkleft.com/new_archives/006390.html.

108. *See, for example, Justice Brennan’s description of defendant employer’s reception to plaintiff’s use of profanity in Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

There were clear signs, though, that some of the partners reacted negatively to Hopkins’ personality because she was a woman. One partner described her as “macho”; another suggested that she “overcompensated for being a woman”; a third advised her to take “a course at charm school”. Several partners criticized her use of profanity; in response, one partner suggested that those partners objected to her swearing only “because it’s a lady using foul language.” . . . In order to improve her chances for partnership, Thomas Beyer advised, Hopkins should “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”

Id. at 235.

I was really struck by the case of a radio host named Sandra Tsing Loh. She was a radio host at KCRW in Santa Monica—a very powerful NPR station. And she inadvertently uttered the word “fuck” on the air. And the station not only fired her but they deleted her archive of work in March of this year. What has it come to that we’re so afraid of the word fuck? All I can say is fuck, fuck, fuck, fuck, fuck. They fired this woman who did a series on knitting! I think that should give people a lot of pause.

emotional.¹⁰⁹ Furthermore, women are not supposed to make any unseemly purchases directed at enhancing our own sexual satisfaction.¹¹⁰ We are understood to prefer prettily designed automobiles with weak engines and automatic transmissions,¹¹¹ though when we do wrap our pretty little hands around manual transmission stick shifts, men find it very, um, alluring.¹¹² We are not expected to drive our girly cars as recklessly as men do.¹¹³

Chantal Gordon, *Q&A: David Wallis*, at <http://www.mediabistro.com/articles/cache/a1924.asp?pnvts=1&> (July 6, 2004) (citations omitted). For further discussion on the reluctance of newspapers and other media to print the "F-word," despite the reason for its use, see Dan Kois, *When Do Papers Print the F-Word? How Do Newspaper Editors Decide?*, at <http://slate.msn.com/id/2102964> (posted June 25, 2004) ("According to the *Post's* ombudsman, Michael Getler, his conversation with Executive Editor Leonard Downie yesterday clarified the paper's long-standing policy on the use of profanity on its pages. "The paper doesn't do it unless it's exceptionally newsworthy and necessary for readers to understand and make a judgment."").

109. *E.g.*, George Gurley, *Coultergeist*, N.Y. OBSERVER, Aug. 26, 2004, at 1, available at <http://www.observer.com/pages/story.asp?ID=6258>. "Men who get upset and lose their tempers and claim to be sensitive males: talk about girly boys. No, there's a reason hurricanes are named after women and homosexual men, it's one of our little methods of social control. We're supposed to fly off the handle." *Id.* (quoting Ann Coulter).

110. Jennifer Senior, *Sex Tips for Red-State Girls!*, N.Y. TIMES, July 4, 2004, available at <http://www.nytimes.com/2004/07/04/magazine/04PASSION.html>.

Last November, passion parties surfaced rather unexpectedly in the news when one of its representatives, Joanne Webb, was arrested for selling two vibrators to undercover agents in Burleson, Tex. The reason, ostensibly, was her violation of an arcane state law forbidding the sale of any device used to stimulate the genitals. But the real reason, it soon became clear, had to do with Webb herself, who had stood a small town on its ear with her short skirts, flirtatious nature and unblushing sexuality.

Id.

111. See Phil Patton, *Your New Baby: A Boy or a Girl?*, N.Y. TIMES, Sep. 13, 2004, at D1 (describing how automobile manufacturers design cars to appeal to certain genders).

112. See, *e.g.*, Teresa House, *Stick-Shift, Bluegills and Dancing*, APPALACHIAN HERITAGE, Spring 2004, at <http://www.berea.edu/publications/appalachianheritage/issues/spring2004/silashouse.html> ("He also liked the fact that I drove a little pickup truck: A stick shift, no less."); Brownielocks, *How to Attract A Man: 10 Tips for the Millenium Woman*, at <http://www.brownielocks.com/glamour.html> ("3. Drive a truck — A big truck is best. If a truck or SUV is not for you, drive a stick shift. Men drool over stick shifts."). *Cf.* Lex Green, *Car Review: BMW 540i & Sunfire GT*, at http://www.askmen.com/toys/cars/31_car_review.html (suggesting that women are more attracted to men who drive stick shifts than those who drive automatics).

113. Laura S. Steppe, *Girl Meets Boy*, at *60 Miles an Hour: In Accident Rates, Women Are Gaining Fast on Men*, WASH. POST, Aug 9, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A50951-2004Aug8.html>.

Young women are crashing cars — and dying in cars — at significantly higher rates than a decade ago. They're driving, in other words, like guys. Federal highway officials are so alarmed by this that they put it near the top of a recent press release, citing among 15- to 20-year-olds a 42 percent increase in young female driver fatalities from 1992 to 2002 (the rate for young males rose 15 percent). State Farm Insurance, a leading auto insurer, has monitored the

Finally, we are not supposed to draw attention to our own lack of visibility when our numbers are small. One of my wonderful law professor mentors¹¹⁴ once gave me this career advice: "If you point out that women are under-represented in a given context, qualified women will often be added, but you will not be one of them. Do it anyway." Although she was right about this,¹¹⁵ it can be difficult and awkward to raise visibility concerns with colleagues who often respond defensively. I once heard a faculty candidate at a job talk speculate that there must be few women on the faculty, because there were so few in the audience. I loved her for making this remark since it is the sort of cluelessly self-destructive thing I say all the time, but I suspected that this comment would further undermine her already uncertain prospects for obtaining an offer of employment, and unfortunately I was correct.

VI. LAWYERLY LOOKS

Media depictions of female attorneys are not generally aimed at cultivating stereotypes of rigid professionalism. With respect to the television program *Ally McBeal*, one observer wrote:

The show often portrays Ally as emotionally unstable. In fact, the show emphasizes her craziness and instability, and minimizes her intelligence and professionalism. The viewers are encouraged to first think of Ally as a funny, confused woman, and second as a lawyer. Ally often hears music in her head. She imagines having interactions with men she desires. Ally imagines a baby walking and dancing on the floor. Even Ally's psychiatrist tells her that she is crazy. By focusing on Ally's mental state, the show discourages the viewers from considering her a successful, intelligent lawyer. Instead, she is seen mainly as a funny, confused and emotionally unstable woman.¹¹⁶

trend and adjusted its rates for girls accordingly: from 61 percent less than boys' rates in 1985, to 40 percent less today.

Id.

114. Professor Marina Angel, Temple University School of Law.

115. Sometimes simply pointing out gender disparities is enough to motivate actors to address them. See, e.g., Mark R. Brown, *Gender Discrimination in the Supreme Court's Clerkship Selection Process*, 75 OR. L. REV. 359 (1996) (arguing that the Supreme Court has discriminated against women in its clerkship selection process).

116. Victoria Alexeeva, *Images of Women Lawyers: Over-Representation of Their Femininity in Media*, 9 CARDOZO WOMEN'S L.J. 361, 364 (2003).

The fictional Ally McBeal had a tendency to dress as inappropriately as she behaved, yet there was a simultaneous implication throughout the series that she was successfully using her looks, charm, and strategic 'flirting' to advance professionally.

Other media depictions of female attorneys are similarly ambivalent. In describing actress Glenn Close's performance in the movie *Jagged Edge*, Stacy Caplow wrote:

Despite her sexual misadventure, Close is not a cardboard cliché of either a lawyer or a woman. Rather, the movie offers an equivocal picture of this career woman. She is a very effective, focused, and proficient trial lawyer, who, with the aid of a salty male investigator, seems to find a smoking gun during her cross-examination of every prosecution witness. At the same time, she wears conspicuously tight, constricting clothing that unavoidably distracts from her professional image. She can barely walk back to her seat after a stinging cross-examination because her skirt is too tight and her heels too high as she walks back and forth to the witness box. The message of her clothing visually undermines any image of competence and gender-neutral skill.¹¹⁷

The Close character behaved like a competent attorney, but apparently she did not choose to dress the part. Whether this sort of choice should be criticized or celebrated is a thorny question. The impact and significance of sartorial preferences are debated among women, even among those who identify as feminists.¹¹⁸ Some commentators advise leaving room for "female pleasure in sexual self-objectification [and] female agency in developing the

117. Stacy Caplow, *Still in the Dark: Disappointing Images of Women Lawyers in the Movies*, 20 *WOMEN'S RTS. L. REP.* 55, 65 (1999).

118. See Sanger, *supra* note 41, at 245.

This is not to say that feminist practices are unproblematic, even among feminists. How, for example, should feminists deal with the authority of "women's experience" when the experience or desires articulated by some women — for motherhood, for pornography, for high heels — are seen by others as the absolute essence of gender subordination? Are these women the subjects of false consciousness? Are they collaborators? Biologically determined? Culturally bound? All white? The answers, and some of the questions, are still being worked out. Apparent contradictions or conflicts have required scholars to look more carefully at the breadth and foundations of various early — sometimes called "first wave" — positions. These include confident but monolithic claims about "women and their problems," the valorization of subjectivity as utterly distinct from the objective and, in law, prematurely staking too much of the feminist claim on equality without sufficiently attending to the demands of difference.

repertoire of sexy dress.”¹¹⁹ Yet it is hard to ignore the fact that a woman’s appearance can clearly impact the onset and severity of ‘Some Dumb Girl Syndrome.’

Blonde hair, for example, whether natural or “unnatural” (whatever that means) sends certain signals, though how those signals are interpreted seems to vary greatly by recipient. According to one observer, “When people are asked to rate various personality traits of people they see only in pictures, they tend to judge blonds as weaker, more submissive, and less wise.”¹²⁰ Barbie is blonde, and no one considers her an intellectual.¹²¹ Singer and performance artist Madonna confronted this stereotype with her “Blonde Ambition” album and tour.¹²² Some might debate whether Madonna is a feminist, but few would dispute her talent, work ethic, or commercial success.¹²³ Another arguably more directly intellectual interrogation of these socially constructed assumptions about hair color’s corollary to intelligence is the articulate web log “Blondesense.”¹²⁴

119. Duncan Kennedy, *Sexual Abuse, Sexy Dressing and the Eroticization of Domination*, 26 NEW ENG. L. REV. 1309, 1347 (1992).

Within the feminist theory that emphasizes the total power of men to shape gendered reality in their interests, it may seem obvious that what I have been describing is men’s ideas about sexy dressing, which they impose on women who then enact them. In this model, men have (socially constructed) reactions of excitement, and they coerce women to produce them, period. The coercion may be direct (men penalize women for not being sexy for them), or work through the destruction of self-esteem so that women have no other means of feeling good, or through material deprivation that leaves them nothing else with which to bargain. In this view, there is little room for either female pleasure in sexual self-objectification or female agency in developing the repertoire of sexy dress (“why would any woman *want* to totter around on high heels?”).

Id.

120. NANCY ETCOFF, SURVIVAL OF THE PRETTIEST, THE SCIENCE OF BEAUTY 127 (1999).

121. See, e.g., Ann Bartow, *Likelihood of Confusion*, 41 SAN DIEGO L. REV. 721, 800-01 (2004).

Barbie® is typically invoked conversationally to convey negative sentiments. Frequently attacked as a symbol of superficiality and materialism, the doll has been accused of promoting negative body images in girls and being “an insta-symbol of everything that’s wrong with our culture’s well-worn images of femininity and beauty.” In a biography, Joan Kennedy referred to Barbie “in order to indicate that she was treated like a beautiful but empty-headed accessory.” In an episode of the sitcom *Ally McBeal*, being called “Barbie” was portrayed as a gross insult to professional women.

Id.

122. See MARK BEGO, MADONNA: BLOND AMBITION (1992); see also, e.g., <http://www.cnn.com/CNN/Programs/people/shows/madonna/timeline.html> (last visited Oct. 20, 2004) (providing a timeline of Madonna’s professional endeavors and achievements).

123. *Id.*

124. See generally BLONDESENSE, at <http://blondesense.blogspot.com/> (last visited Feb. 25, 2005).

Still another challenge to hair color stereotyping, more directly linked to the legal profession, was the movie *Legally Blonde*, which sparked a lot of diverse commentary.¹²⁵ A male law school professor and reviewer described the blond protagonist of this mainstream Hollywood production as follows:

Blond bombshell Elle Woods . . . gets into Harvard Law School on the strength of a smashing 179 LSAT and a 4.0 in fashion merchandising — plus a dazzling video (submitted in lieu of the usual essay). She's at Harvard to chase her former boyfriend and despite the advice of her parents that lawyers are ugly, boring and serious. She is definitely none of the above.¹²⁶

He ultimately concluded that the flick was “an engaging bit of piffle with some worthwhile things to say about law school and eastern snobs, but no good ideas when it comes to the courtroom.”¹²⁷

Another male law professor found the film to be a “delightful diversion”¹²⁸ that responded to “a tension which afflicts many law students,” particularly females,¹²⁹ with respect to combining “the attractive ‘soft’ side of one’s personality with the ‘hard’ edge necessary for professional success.”¹³⁰ According to this reviewer, “*Legally Blonde* claims the new woman can have it all, frilly underwear, loving relationships, and professional success.”¹³¹

One female law professor interpreted the movie somewhat differently, asserting that it “conveys a serious and somewhat subversive message: you can rise above everyone’s expectations or imposed limitations (even and especially your own) to become something more — even if your initial reasons for going in that direction are not the reasons that cause you to continue to go in that direction.”¹³² This message, she asserted, “is not limited to blonde women, but applies to anyone who tends to be judged by stereotypical assumptions.”¹³³

125. See *infra* notes 127-41 and accompanying text.

126. Michael Asimow, *Legally Blonde Shines in the Classroom, Falls Flat in the Courtroom*, at http://www.usfca.edu/pj/blonde_asimow.htm (Aug. 31, 2001).

127. *Id.*

128. John Denvir, *First Thing, Let's Kill All the Lawyers!*, at http://www.usfca.edu/pj/blonde_denvir.htm (Aug. 31, 2001).

129. *Id.*

130. *Id.*

131. *Id.*

132. Taunya Lovell Banks, *Review of Legally Blonde*, at http://www.usfca.edu/pj/blonde_banks.htm (Sept. 14, 2001).

133. *Id.*

Another female law professor found “real human messages in this film.”¹³⁴ She wrote that the meaning of the movie was:

Women’s stuff matters (relationships, facts, being treated like a functioning human being no matter what one looks like, including respect). Discrimination comes in many forms. But most important, to this old trial veteran and professor, the light and funny movie actually demonstrates the importance of hard work and fact investigation.¹³⁵

In one male law professor’s less favorable review, he indicated that the cinematic elevation of a blonde women with a penchant for pink served as evidence of collapsing standards and rampant anti-intellectualism.¹³⁶ He encapsulated the movie as follows:

Elle wins out over all the other law students (and lawyers and teachers) because she’s smart; but also became [sic] she has keen insights, which come from her life as a ditsy, clothes-mad, superficial and shallow woman and human being — someone whose idea of stress reduction is having her nails done. The movie does make fun of her, yes, but affectionately — more affectionately than the way it treats the other students, except when Elle rescues them from their total dorkdom. It’s a movie which reflects America’s anti-intellectualism. Intellectual curiosity and broad culture are totally irrelevant to achieving success — even at the Harvard Law School. The movie allows the audience to laugh at intellect and culture, even to pity them; and to cheer for the success of a woman who, for all her charm and brains, has neither intellectual curiosity nor culture of any kind.¹³⁷

Evidencing a similar reaction, another male law professor wrote:

At one point in *Legally Blonde*, Elle is told not to go to law school because law school is for those who are “ugly, serious and boring.” The movie seems to agree. The students are stuck-up and the faculty is nasty (and worse). What’s really offensive,

134. Carrie Menkel-Meadow, *West Meets East in Legally Blonde*, at http://www.usfca.edu/pj/blonde_menkel.htm (Aug. 31, 2001).

135. *Id.*

136. Lawrence Friedman, *Legally Blonde: A Bitter Residue*, PICTURING JUSTICE: THE ON-LINE J. OF L. & POPULAR CULTURE (Sept. 21, 2001), at http://www.usfca.edu/pj/blonde_friedman.htm.

137. *Id.*

however, is that they all seem so-well, dumb. In this crowd, no wonder Elle can rise to the top.¹³⁸

Thus, some reviewers seemed to find the idea that a stereotype-defying, pretty blond woman could succeed on her own terms amusing or inspiring, while others found this concept “offensive”¹³⁹ and “something quite negative.”¹⁴⁰ All might agree, however, that Elle refused to blend in and behave like a conventional attorney. This made her, deservedly or not, an object of ridicule and scorn, and required her to go to greater lengths to prove herself a capable attorney than might have been necessary had she been more of a conformist.

Obviously, women should feel free (and indeed empowered) to dress and appear any way they like. The difficulty that different views about professional attire creates is that self-selected sexy dressing by one cohort of women creates normative expectations among men that are unwittingly thwarted by other females — those who prefer clothing driven by alternative fashion considerations, such as comfort or camouflage.¹⁴¹ Employers and co-workers may view women who do not wish to appear stereotypically sexy as not doing their jobs.¹⁴² Advice given to Ann Hopkins to improve her chances of promotion to partnership at the Price Waterhouse accounting firm included admonitions to: “Walk more femininely, talk more femininely, dress more femininely, wear make-up, have [your] hair styled, and wear jewelry.”¹⁴³ Unbeknownst to her until she was passed over for promotion, one of her employment responsibilities was to look as pretty as possible for the benefit of her male colleagues.¹⁴⁴ As a former William and Mary Law student has noted:

“Artificial” beauty, in particular, is designed for the benefit of the onlooker. Eyeshadow, high heels, colored nail polish,

138. Paul R. Joseph, *Legally Blonde: It's a Crime*, PICTURING JUSTICE: THE ON-LINE J. OF L. & POPULAR CULTURE, at http://www.usfca.edu/pj/blonde_joseph.htm (last visited Jan. 18, 2005).

139. *Id.* Joseph finds the film “offensive” in its inaccurate depiction of law school as an area in which individuals can coast by and still achieve success so long as they work hard in the end. *Id.* (commenting that it is no wonder Elle succeeds in a atmosphere filled with seemingly dumb people).

140. Friedman, *supra* note 136.

141. See *infra* notes 142-46, 159 and accompanying text.

142. See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 229 (1989).

143. *Id.* at 235.

144. *Id.*

opalescent lipstick, and other unnatural looks are evidence of the effort and interest that went into a woman's appearance and send the message that the viewer is worth the time and effort necessary to create the look. The more a woman is willing to sacrifice for the sake of someone else's pleasure, the more valuable the viewer feels. Artificial beauty is more than a statement about the beautiful woman (the object); it is a declaration of the importance of the viewer (the subject). Indeed, beauty is one example of how "[w]omen have served all these centuries as looking glasses possessing the magic and delicious power of reflecting the figure of man at twice its natural size."¹⁴⁵

Assumptions that women should always strive for a particular beauty ideal are often integrated into seemingly unrelated social commentary. For example, in the context of reviewing automobiles, writer Mickey Kaus felt it was perfectly acceptable to write: "The sporty little Mercedes SLK now features an obnoxious central prong. And check out the schnozzles on the new Audi A6 and on the Mercedes/McLaren supercar. When girls at my high school had a nose like that, they got it fixed!"¹⁴⁶

Reserving judgment on the audacity or folly of auto companies intentionally manufacturing cars that sport proboscis-like protrusions, one can see that Kaus communicates a historical normative view of how "girls" he observed reacted if they were born with large noses. While one cannot reasonably command women to adopt specific styles of dress and modes of appearance and eschew others, one can certainly note the negative consequences of particular choices.¹⁴⁷ One commentator observed:

Past beauty practices — like Japanese foot binding, consumption of poisonous arsenic to blanch the skin white, whale bone corsets that crushed ribs to produce the "perfect" female shape, and golden rings to stretch female necks in certain [sic] African countries — are perceived, rightfully so, as barbaric. Meanwhile current practices are defended,

145. Kerith Cohen, Note, *Truth & Beauty, Deception & Disfigurement: A Feminist Analysis of Breast Implant Litigation*, 1 WM. & MARY J. WOMEN & L. 149, 157-58 (1994) (quoting VIRGINIA WOOLF, *A ROOM OF ONE'S OWN* 53 (1929)).

146. Mickey Kaus, *Def Cab for Cutie: Toyota's Subversive Anti-Car*, at <http://www.slate.com/id/2103009> (last updated July 2, 2004).

147. In some cases, high maintenance investments in one's outward appearance can purportedly be used to stifle, rather than elicit, sexual advances. Some "abstinence educators" advise deflecting amorous advances with statements such as: "I spent all week deciding what to wear tonight and three hours getting ready. If you think you are going to mess any of this up, you are sadly mistaken." Abstinence Clearinghouse, at <http://www.abstinence.net/library/index.php?entryid=390> (last visited Jan. 18, 2005).

even celebrated, as beauty 'aids,' and as a woman's 'free choice.' But are these practices any less barbaric? Consider: surgically enlarged silicone breasts, that scientific evidence has revealed is causing major trauma and risk to many women's long term health; liposuction and stomach stapling; painful and uncomfortable forms of dieting with numerous ill side effects; the all-too familiar c rash [sic] diets, self-starvation, bingeing and self-induced bulimic vomiting of food; and bodily confinement via girdles, push up bras and bustiers, and self-hobbling high heels. The intensity of the barbarism has scarcely declined over the centuries, even af ter [sic] the movement for women's liberation.¹⁴⁸

In this author's view, the 'sexy dressing' question does not pose a 'double bind' for professional women. It is undeniable that an attractive facade can be useful to one's career. Yet many very smart women have determined that they can succeed at their professions without unduly conforming to societal expectations of how they should appear. If one observes the photographs of women who have succeeded in businesses unrelated to beauty or fashion products — such as female judges or partners at law firms, female doctors, the women on any university faculty, or MacArthur Foundation fellows, one notices that while they are all radiantly beautiful on their own terms, few appear particularly preoccupied with issues of clothing, hair, or make-up.¹⁴⁹

VII. ON NOT BEING A HEEL

Coercion of women to wear skirts rather than pants is anecdotally widespread in the legal profession¹⁵⁰ but only seems

148. Steven Hill, *Beauty and the Beast — An Unhappy Marriage*, WOMEN VS. MEN, available at <http://www.giantleap.org/envision/appearance.htm> (last visited Jan. 18, 2005).

149. For pictures of 2004 MacArthur Fellows, see The John D. and Catherine T. MacArthur Foundation, at http://www.macfdn.org/programs/fel/winners_overview.htm (last visited Jan. 18, 2005).

150. See generally Shannon P. Duffy, *Pantsuits Coming out of the Closet? Philadelphia DA Tosses Skirts-Only Policy*, LEGAL INTELLIGENCER, Dec. 1, 2003, at <http://www.law.com/jsp/article.jsp?id=1069801652231>; Robin Girhan, *Hillary Gets Down to Business: Attired in Black Pantsuit, She Takes On Uniform of Power*, HERALD TRIBUNE, Mar. 3, 2000, available at <http://www.iht.com/IHT/SR/030300/sr030300b.html> (observing Senator Hillary Clinton's strategic transition from skirts to pantsuits despite hesitance among women in Washington, especially lawyers, to wear pantsuits); *Skirting the Issue*, SUA SPONTE: NY LAW SCHOOL ODYSSEY: THE ONGOING NARRATIVE, Aug. 20, 2003, at <http://www.suasponste.org/archives/000542.php>; *Advice for the Lawlorn*, NEW YORK LAWYER, Sept. 30, 2002, available at <http://www.ny.lawyer.com/lawlorn/02/ad093002.html> (last visited Jan. 18, 2005) (describing how a female

to be newsworthy when it is a woman who is compelling other women to wear skirts.¹⁵¹ Whether there is overt social pressure on women lawyers to wear shoes with high heels, however, is less clear. The classic feminist description of Ginger Rogers is that she did everything Fred Astaire did, only backwards and in high heels.¹⁵² Because doing complicated steps backwards while wearing high heels greatly exacerbates the difficulty of the steps, this unsubtly implies that Ginger was a far better dancer than Fred. However, it skirts the crucial point that wearing high heels is simply a bad idea.¹⁵³

law student's knee injury prompted her to wear pantsuits despite suggestions that skirts were better for interviews).

151. Elaine Porterfield, *Judge Wants Women Attorneys to Wear Skirts in Her Courtroom*, SEATTLE POST-INTELLIGENCER, Sept. 30, 1999, available at <http://seattlepi.nwsource.com/local/dres30.shtml>; Jacqueline Soteropoulos, *D.A. Changes a Skirts-Only Rule*, PHILADELPHIA INQUIRER, available at <http://www.philly.com/mlid/inquirer/news/local/7350914.htm> (posted Nov. 26, 2003). But see Stephanie Stoughton, *Navy Changes Skirt Policy, Making Apparel Optional*, THE SAN DIEGO UNION-TRIBUNE, Oct. 18, 2004, available at http://www.signonsandiego.com/uniontrib/20041018/news_1n18navy.html:

The U.S. Navy is getting a 21st century makeover, with a new dress code that makes skirts optional for its more than 54,000 female sailors for the first time since women officially entered the service in 1908. Women can still choose to wear skirts, which come in colors that vary according to rank and sometimes the season. But until the new rules went into effect this month, they had to maintain skirts in their sea bags and could be ordered to wear them for special events such as change-of-command and retirement ceremonies.

Id.

152. Amy R. Zunk, *Backwards and in 4-inch Heels: Introduction*, at <http://www.geek.com/features/femgeek/nov32000.htm> (posted Nov. 3, 2003); *Backwards and in High Heels*, Reel Classics, at <http://www.reelclassics.com/Actresses/Ginger/ginger-article2.htm> (last modified Nov. 4, 2004); *Definition of Ginger Rogers*, Word IQ, at http://www.wordiq.com/definition/Ginger_Rogers (last visited Jan. 24, 2005).

153. Lorraine Kreahling, *In the Relentless Pursuit of Fashion, the Feet Pay the Price*, N.Y. TIMES, Aug. 31, 2004, at F5, available at <http://www.nytimes.com/2004/08/31/health/nutrition/31foot.html>.

High heels can be bad for wearers for several reasons, said Dr. Tzvi Bar-David, a doctor of podiatric medicine at Columbia Presbyterian Medical Center in New York.

An elevated heel lifts the foot out of its natural position and shortens the Achilles' tendon. Such shoes also pitch the weight of the body forward disproportionately onto the ball of the foot, which in turn upsets the stabilizing mechanics of the foot.

"High heels have a narrow area of contact and they point the toes downward, which puts the foot in an internally rotated position and makes their wearer more prone to spraining an ankle," Dr. Bar-David said.

The padded human heel is there to absorb the shock, he said. When the heel hits the ground, the pressure is that of two and a half times one's body weight.

"When you walk on your heel, you need to be able to absorb the impact of the heel strike," Dr. Bar-David said. "Your foot then becomes a rigid stabilizer, so you can push off in the toes in a balanced way. You don't want that rigidity to travel up through your bones."

High heeled shoes have contributed to many injury-causing accidents,¹⁵⁴ for which women themselves now bear at least partial responsibility. Historical dress standards accorded high heels the status of a norm or custom, and courts generally did not conclude that a woman was contributorily negligent for an injury suffered while wearing high heels when attempting to board a train, for example.¹⁵⁵ The modern view of high heels is somewhat different. Testimony that a woman was wearing high heels has been proffered as evidence that she was not injured, that her injuries had healed,

Pain in the back, neck and knees can be the result of shock that travels up the skeleton from a nonresilient heel

In addition, fashionable shoes that try to convert the foot into an ideal form, with the toes narrowed or tapered to a point, often require cramming the foot into less space than it would normally occupy.

Regular tight shoes put pressure on nerves and even damage them, and also contribute in the long run to arthritis, doctors say. Shoes with pointed toes or stiff soles, like the leather versions common in many high-quality shoes, can impede the foot's mechanical function by limiting toe and ankle flexibility, said Dr. Thomas Novella, who practices podiatric medicine in Manhattan and counts many professional dancers and athletes as well as leisure-time runners among his patients.

"Metatarsal pads or stiff shoes inhibit the toes' range of motion and can make you lose toe strength," Dr. Novella said. "You are cheated of the power of your toes, those little muscular soldiers lined up in your feet that are there to help carry you forward."

Dr. Novella said inflexible toe beds were one of the most common causes of shin splints. "If you can't push off with your toes, you begin to pull up or grip with them," he said. Because tendons in the toes attach to the tibia, when the toes tug, it can register in the shins.

Tight shoes also can produce foot deformities in the toes, and can lead to symptoms from deformities that might otherwise go unnoticed, said Dr. Gary Jolly, president of the American College of Foot and Ankle Surgeons, who practices in Hartford. People have a genetic predisposition toward bunions and hammer toe deformities, he said, but shoes are often the factor that turn conditions into problems.

"Almost all bunion surgeries are done on women," he said, adding that because men's shoes normally fit the natural contours of the foot and have plenty of space inside, men may have bunions but no pain.

Id.

154. Margo Schlanger, *Injured Women Before Common Law Courts, 1860-1930*, 21 HARV. WOMEN'S L.J. 79, 114 n.131 (1998).

155. Gary T. Schwartz, *Feminist Approaches to Tort Law*, 2 THEORETICAL INQ. L. 175, 183 n.49 (2001).

or that they were insignificant,¹⁵⁶ as well as to support claims of comparative or contributory negligence.¹⁵⁷

Jobs that require high heels tend to be low-status and tend to require displays of overt feminine sexuality. Playboy bunnies, for example, are required to wear shoes with four- to five-inch heels for entire five to seven hour shifts.¹⁵⁸ Not surprisingly, suggestions that employees wear high heels, or comments about high heels, when made in employment contexts, have been submitted as evidence of sexual harassment.¹⁵⁹

At least one high profile legal scholar has posited several reasons for which men find high heeled shoes on women attractive. He wrote that the fashion for high heels "symbolizes the woman's limited mobility, hence the unlikelihood that she will stray from

156. See, e.g., *Piscottano v. Metro. Life Ins. Co.*, 118 F. Supp. 2d 200 (D. Conn. 2000) ("Additional surveillance from October 28, 1997, capturing four minutes of Ms. Piscottano's activities, reported that Plaintiff was seen walking briskly wearing high heels, bending at the waist to pick up car keys, and carrying a storage box of papers to her car - all without signs of pain or discomfort."); *Adams v. United States*, 964 F. Supp. 511 (D. Mass 1996) ("During the summer of 1992 Joanne McEnaney observed plaintiff . . . frequently running across the street in high heels.")

157. See, e.g., *Pagan v. Shoney's, Inc.*, 931 F.2d 334, 339 (5th Cir. 1991) ("It apparently also believed that Pagan walked down a handicap ramp in high heels and that doing so may have caused her to fall. In short, there is far from an 'absolute absence' of evidence to support the jury's verdict that Pagan was 90% comparatively negligent.")

158. See, e.g., *Bohus v. Beloff*, 950 F.2d 919 (3d Cir. 1991) ("In July, 1982, plaintiff Denise Bohus was employed as a 'bunny' in the Playboy Club in Atlantic City, New Jersey. This job required her to wear shoes with four- to five-inch heels and remain on her feet for five to seven hours each work shift.")

159. See, e.g., *Elmasry v. Veith*, 2000 U.S. Dist. LEXIS 340 (D. N.H. 2000) ("Veith instructed Elmasry beforehand to wear her hair down, a nice dress and high heeled shoes on the day his boss was coming."); *Duff Supply Co. v. Crum & Forster Ins. Co.*, 1997 U.S. Dist. LEXIS 6383 (E.D. Pa. 1997) ("The sexually hostile work environment endured by plaintiff included comments on plaintiff's clothing (when plaintiff wore high heels they were referred to as 'f-k me pumps' [sic]); plaintiff was referred to generally as 'the f- ing [sic] bitch'; and women were generally referred to as 'sluts' and 'whores.'"); *Rudas v. Nationwide Mut. Ins. Co.*, 73 Fair Empl. Prac. Cas. (BNA) 187 (E.D. Pa. 1997).

Rawlings did not confine himself to 'e-harassment.' When Rudas went to him to discuss cases, he demanded that Rudas don a pair of high heels that Rawlings kept beneath his desk so that he could photograph her. Only after Rudas had submitted to this demeaning obligation would Rawlings consult with her on litigation matters.

Id.; *Dias v. Sky Chefs, Inc.*, 54 Fair Empl. Prac. Cas. (BNA) 1460 (D. Ore. 1989).

In September of 1986, Nathalia called the staff into his office and told them "he liked for his girls to wear dresses and high heels to work because he liked women's legs . . ." Dias first openly objected to Nathalia's behavior in October of 1986 when Nathalia told the office staff he wanted them to wear high heels and dresses to work. In response, Dias began wearing slacks, skirts and knee high socks. Nathalia reprimanded Dias in front of the office staff and became very hostile toward her. He told her she looked like a pig (citation omitted). He told her he thought she was "mentally ill" and called her a "bitch."

Id.

her man.”¹⁶⁰ Indeed, he asserted that “high heels have a symbolic function, similar to that of Chinese foot-binding, of impeding female mobility,” and that “women’s shoes are considered attractive only if they appear to be uncomfortable.”¹⁶¹ If nothing else, the mental picture of being hobbled by high heels as one is chased down for unwanted risqué advances by a law and economics scholar should make the reader rethink wearing elevating footwear.

VIII. GENDERED LANGUAGE

The use of gender neutral language has become fairly commonplace in many environments. As one commentator noted, “Man once was a truly generic word referring to all humans, but has gradually narrowed in meaning to become a word that refers to adult male human beings,”¹⁶² which spares the intellectual discourse from additional research reports with titles like “Development of the Uterus in Rats, Guinea Pigs, and Men.”¹⁶³

Though the English language does not require inanimate objects to be accorded a gender, ships and countries are often referred to with the pronoun “she,” as if they are female.¹⁶⁴ This

160. RICHARD A. POSNER, *SEX & REASON* 109-10 (1992).

Many social customs plausibly rooted in the conservative female sexual strategy posited by the socio-biologists — coyness, the fashion for high heels (symbolizing the woman’s limited mobility, hence the unlikelihood that she will stray from her man), requiring the man to pay the costs of a date (which screens out the inadequate provider), and so forth — are rapidly going by the board.

Id.; see also Larissa MacFarquhar, *The Bench Burner: An Interview with Richard Posner*, *THE NEW YORKER*, Dec. 10, 2001, available at http://www.iconservatives.org.uk/richard_posner.htm (describing Posner’s conclusions in *SEX AND REASON* about women and high heels as odd); Annabel Lyon, *Ethical Juices*, available at <http://www.geist.com/columns/columns.php?id=20> (last visited Oct. 18, 2004); *Sense and Nonsense*, *THE ECONOMIST*, June 19, 2003 (reviewing RICHARD A. POSNER, *LAW, PRAGMATISM, AND DEMOCRACY* (2003)), available at http://www.economist.com/books/displayStory.cfm?story_id=1858788 (referring to Posner’s explanations of why high-heeled shoes are considered sexy as “loony”).

161. Richard A. Posner, *The Radical Feminist Critique of Sex and Reason*, 25 *CONN. L. REV.* 515, 520 n.11 (1993).

162. Carolyn Jacobson, *Some Notes on Gender-Neutral Language*, available at <http://www.stetson.edu/artsci/history/nongenderlang.html> (last visited Oct. 18, 2004). Consider, however, the fact that the words “All Men Are Created Equal” were penned at a time that women could not vote or own property.

163. *Id.*

164. See, e.g., *Personal Pronouns*, at <http://www.fortunecity.com/bally/durrus/153/gramch18.html> (last visited Feb. 24, 2005) (“If a third person singular antecedent does not refer to a human being, the pronoun it is usually used. However, when the thing named by the antecedent is referred to as if it had human qualities, the pronoun **he** or **she** may be used. For instance, ships and countries are sometimes referred to as **she**.”); R.W. BURCHFIELD, *THE NEW FOWLER’S MODERN ENGLISH USAGE* 590 (rev. 3d ed. 1998)

practice seems particularly strange when the ship at issue is named after a man, such as the USS Abraham Lincoln,¹⁶⁵ or when the nation at issue is often represented by a totemic male figure such as “Uncle Sam.”¹⁶⁶ When referring to humans, gender specific pronouns allow for efficient differentiation between males and females, and their virtually omnipresent usage tends to suggest that the most important trait people possess is a gender, and that language plays a critical role in identifying individuals by gender.

The astute and pragmatic Justice Ruth Bader Ginsburg explained why she began using the word “gender” rather than “sex” in the legal briefs she filed in sex discrimination cases ultimately decided by the United States Supreme Court as follows:

I owe it all to my secretary at Columbia Law School, who said, “I’m typing all these briefs and articles for you and the word sex, sex, sex, is on every page Don’t you know that those nine men – they hear that word, and their first association is not the way you want them to be thinking? Why don’t you use

Personification arises partly as a natural or rhetorical phenomenon and partly as a result of the loss of grammatical gender at the end of the Anglo-Saxon period. In Old English a pronoun used in place of a masculine noun was invariably he, in place of a feminine noun heo (= she), and in place of a neuter noun hit (= it). When the system broke up and the old grammatical cases disappeared, the obvious result was the narrowing down of he to refer only to a male person or animal, she to a female person or animal, and it to nearly all remaining nouns. At the point of loss of grammatical gender, however, he began to be applied ‘illogically’ to some things personified as masculine (mountains, rivers, oak-trees, etc., as the Oxford English Dictionary has it), and she to some things personified as feminine (ships, boats, carriages, utensils, etc.). For example, the Oxford English Dictionary cites examples of he used of the world (14c.), the philosopher’s stone (14c.), a fire (15c.), an argument (15c.), the sun (16c.), etc.; and examples of she used of a ship (14c.), a door (14c.), a fire (16c.), a cannon (17c.), a kettle (19c.), and so on. At the present time such personification is comparatively rare, but examples can still be found: e.g. Great Britain is renowned for her stiff upper lip approach to adversity; I bought that yacht last year: she rides the water beautifully; (in Australia and NZ) she’s right; she’s jake; she’s a big country, etc.”)

Id.

165. See, e.g., *Gender Specific Pronoun*, at http://www.fact-index.com/g/ge/gender_specific_pronoun.html (last visited Jan. 19, 2005) (explaining the tradition of referring to ships using feminine pronouns despite the fact that they may be named after men).

166. See Bernard Weiner, *Primer for the Undecided: Why It’s Kerry*, at <http://www.crisispapers.org/essays/primer-undecideds.htm> (Oct. 11, 2004) (“In short, despite Bush and Cheney insinuating that Saddam was part of the 9/11 attack, Iraq was a weak sister who could do little harm to anybody, not to his [sic] neighbors and certainly not to us.”).

the word gender? It is a grammatical term and it will ward off distracting associations."¹⁶⁷

Ginsburg has been criticized for this,¹⁶⁸ but I think her instincts were correct. Language usage matters, and one must know her audience.

When a man in a position of authority refers to a woman as "the girl," or "my girl" (as in, for example, "I'll have my girl set something up"), he is usually indicating that she is in a position subordinate to his, such as his secretary or assistant.¹⁶⁹ The same man is unlikely to call subordinate men "boys," unless he intends a racial (and racist) connotation, as calling black men "boy" has long been a way to demean them and diminish their standing.¹⁷⁰ Men will also refer to non-subordinate women as "girls" in various social contexts, often to telegraph their otherness, such as by generalizing about how "girls" are, what they are like, or what they do.

When women call each other "girls," this tends to signal to the listener that they are not feminists, but instead have adopted the sexist, patronizing semantics of men.¹⁷¹ They are apt to be viewed as unenlightened at best. Even Playboy Magazine refers to adult females as women, as evidenced in public announcements

167. Anne Coughlin, *Sex and Self-Governance*, 29 MCGEORGE L. REV. 17, 17 (1997) (quoting Justice Ginsberg).

168. See *id.*; see also Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 10 (1995) (arguing that Ginsburg's use of the words "sex" and "gender" interchangeably have created confusion between categories of male and female and masculine and feminine).

169. Darryl McGrath, *Referring to Adults as 'Girls' Is Demeaning? Hip?*, available at <http://www.womensnews.org/article.cfm/dyn/aid/986/context/archive> (July 28, 2002):

"'Girl' is an infantilizing term for women," said Sherryl Kleinman, a sociology professor at the University of North Carolina at Chapel Hill. "This becomes clearest when the doctor uses it to refer to his assistant or secretary, even if she is 50 years old: 'Talk to the girl up front.' I have heard this numerous times in the recent past."

Id.

170. David Pilgrim & Phillip Middleton, *Nigger and Caricatures*, n.4, at <http://www.ferris.edu/news/jimcrow/caricature/> (Sept. 2001) ("Even innocent words — boy, girl, and uncle — took on racist meanings when applied to blacks.").

171. See, e.g., Sjobhan Connolly et al., *Non-Sexist Language*, at <http://www.ucc.ie/ucc/equalcom/language.html> (last visited Oct. 18, 2004) (suggesting that the use of the term 'girl' to refer to a woman implies that society sees her as immature and irresponsible); see also Dawnelle Loiselle, *Sexism and Language*, at <http://www.towson.edu/~loiselle/sexlang.html> (last visited Oct. 18, 2004); see, e.g., *Sexism*, at http://www.randomhouse.com/words/language/avoid_guide.html (last visited Oct. 18, 2004) (noting examples of sexist language and exploring ways of eliminating it); John Williams, *Gender-Neutral Pronoun FAQ*, at <http://www.aetherlumina.com/gnp/faq.html> (last visited Oct. 18, 2004); *id.* at <http://www.aetherlumina.com/gnp/references.html>.

about Playboy's Women of Home Depot, Women of McDonald's, and Women of Wal-Mart pictorials.¹⁷² To characterize women who call each other "girls" as less enlightened than Playboy is probably unfair, but that may be the impression that is being created among listeners. One career consultant noted:

Men are doing better than women these days. Most men have been corrected at least once and know the terms [girl or gal] make some women bristle. But why do some women continue to call *themselves* girls? It sounds demeaning and childlike in a business setting. If one of the "girls" asks to be promoted to management, all the manager is likely to see is a little girl who wants to play dress-up. It's wise to remember the first three letters of the words *management* and *manager*. Do yourself and your female colleagues a favor — call yourselves women.¹⁷³

The political sphere provides high profile evidence of the pejorative implication of girlhood and girlishness. Women are statistically more likely to consider themselves Democrats than Republicans.¹⁷⁴ Perhaps in consequence, Republicans publicly castigate their opponents as "sensitive" or "girlie."¹⁷⁵

172. Parija Bhatnagar, *Home Depot Gals Take It Off for Playboy*, available at http://money.cnn.com/2004/07/06/news/newsmakers/homedepot_playboy/index.htm?cnn=yes (July 6, 2004); Parija Bhatnagar, *McDonald's Gals in Playboy Display*, available at http://money.cnn.com/2004/11/16/news/fortune500/playboy_mcdonalds/index.htm?cnn=yes (Nov. 16, 2004) (discussing Playboy's Women of McDonald's). The adult male publication published many other features in which the models were referred to as "women," including the "Women of Enron" and "Women of Starbucks." Parija Bhatnagar, *Playboy Undresses Wal-Mart Women*, available at http://money.cnn.com/2003/11/12/news/companies/walmart_playboy/?cnn=yes (Nov. 12, 2003).

173. Joan Lloyd, *Progress in Office Comes Step by Step*, available at <http://www.joanlloyd.com/articles/open.asp?art=137.htm> (June 22, 1986).

174. See THE PEW RES. CTR. FOR THE PEOPLE & THE PRESS, THE 2004 POLITICAL LANDSCAPE: EVENLY DIVIDED AND INCREASINGLY POLARIZED, at <http://people-press.org/reports/display.php3?PageID=750>; *Gender and Politics*, at <http://www.gendercenter.org/politicsg.htm> ("Women tilt Democratic by a margin of 36% to 29%") (last visited Oct. 18, 2004);

Barbara Palmer & Dennis Simon, *Gender, Party and Political Change: The Evolution of a Democratic Advantage* 21, available at <http://www.apsanet.org/PS/jan04/esymposium/palmer.pdf> (last visited Oct. 18, 2004); Brian Schaffner, *Priming the Gender Gap: Campaigning on Women's Issues in U.S. Senate Elections* 4, available at <http://homepages.wmich.edu/~bschaffn/mpsa.pdf> (last visited Oct. 18, 2004); Matt Stoller, *W Is for Women*, available at <http://www.bopnews.com/archives/001431.html> (last visited Jan. 18, 2005) (Sept. 1, 2004); Michael Ludden, *Poll: College Students Moving Toward Kerry*, Oct. 21, 2004, at <http://www.cnn.com/2004/ALLPOLITICS/10/21/college.poll/index.html> (suggesting that women prefer Kerry over Bush); *Election Results*, at <http://www.cnn.com/ELECTION/2004/pages/results/> (reporting that of the 54% of voters who were women, 51% preferred the Democratic candidate for President over George W. Bush) (last visited Feb. 21, 2005).

175. See Chuck Raasch, *Schwarzenegger Sets the Tone*, available at http://www.qctimes.com/internal.php?story_id=1034284&t=Nation+%2F+World&c=26,1034284 (last updated

clearly and carefully chosen terms of voter-alienating opprobrium. For example, Republicans seeking to diminish Democratic Vice Presidential candidate John Edwards referred to him as the "Breck Girl."¹⁷⁶ One commentator at the 2004 Republican National Convention observed:

It was depressing to hear Dick Cheney, who spoke on Wednesday night, repeat his crowd-pleasing snipe against Senator Kerry for calling for "a more sensitive war on terror." It was a phony criticism, given that Mr. Bush has used almost identical language in the past. But, worse, it signaled that Mr. Cheney and the administration's other hit men will spend the next two months trying to sell their failed approach to foreign policy, and encouraging Americans to believe that anyone who acknowledges that the United States needs to take a more patient and humble approach to the world is in league with the girlie men.¹⁷⁷

Of course, at least one political conservative believes that rather than analyzing a candidate's performance or policy positions, women respond to candidates strictly on an emotional level, reacting positively to a "deep voice" because it "is an indicator of high testosterone and thus of manly strength."¹⁷⁸

Conservative analyst Gary Aldrich attended the Republican National Convention and objected to the extensive security measures deployed there, writing, "It will be a mistake to end this convention in NYC leaving the impression that this armed

Sept. 1, 2004); *Schwarzenegger's 'Girlie Men' Line Under Fire*, July 20, 2004, at <http://www.cnn.com/2004/ALLPOLITICS/07/19/arnold.girlie.ap/>.

176. Judson Cox, *The John Edwards that North Carolina Knows*, available at <http://www.intellectualconservative.com/article4001.html> (Jan. 28, 2004); Daniel Kurtzman, *Political Humor*, available at <http://politicalhumor.about.com/library/images/blpic-edwardsbreckgirl.htm> (last visited Oct. 18, 2004); Evan Thomas et al., *The Boyish Wonder*, available at <http://www.msnbc.msn.com/id/5411915/site/newsweek> (last visited Oct. 18, 2004) ("Today Republican operatives sneeringly call him 'the Breck Girl' for his shiny mop of hair."); Joan Vennoch, *Edwards Obstacle: 'Breck Girl' Good Looks*, ARIZONA DAILY STAR, Jan. 10, 2004, available at <http://www.azstarnet.com/sn/vote/5289.php>.

177. Bonnie C. Rogoff, *The GOP Convention and Its Aftermath*, AMERICAN DAILY, Sept. 8, 2004, available at <http://www.americandaily.com/article/4953>; see also Fred Kaplan, *Lies, Damned Lies, and Convention Speeches, Setting Kerry's Record Right — Again*, at <http://www.slate.com/id/2106119/> (posted Sept. 2, 2004) (arguing that the phrase "girlie-man" could be used to refer to Dick Cheney as easily as Cheney has implied that this phrase refers to Kerry).

178. Steven E. Rhoads, *The Testosterone Test*, at <http://www.nationalreview.com/comment/rhoads200410040832.asp> (posted Oct. 4, 2004). *But* see Sharon Lerner, *Awkward Kerry, Hopeless Bush*, at <http://www.villagevoice.com/issues/0424/lerner.php> (posted June 15, 2004) (discussing many women's disillusion with both Kerry and Bush due to the candidates' failure to address important issues facing single mothers).

camp is somehow normal. The ladies may be put at ease by the sight of all this authority, but I happen to like having the freedom to move around the streets unmolested.”¹⁷⁹ His sexist lament generated this feisty reply: “Yes, the women-folk need a squad of burly cops with riot gear on every corner in order to feel safe, Gary. They are fearful, timorous [sic] creatures who need shows of brute force in order to feel comfortable at the Republican convention, what with all of the sex scandals the [Republican] party is known for.”¹⁸⁰

Pundit Frank Rich opened a column about the 2004 Presidential candidates by remarking, “Only in an election year ruled by fiction could a sissy who used Daddy’s connections to escape Vietnam turn an actual war hero into a girlie-man.”¹⁸¹

179. Gary Aldrich, *Escape from New York*, at <http://www.townhall.com/columnists/garyaldrich/ga20040901.shtml> (posted Sept. 1, 2004).

180. *Everybody Loves a Town (hall), So Why Don't You*. WORLD O'CRAP: A DAILY DIATRIBE ABOUT CURRENT EVENTS, BAD MOVIES, POP CULTURE, ANN COULTER, ETC., at <http://blogs.salon.com/0002874/2004/09/02.html> (Sept. 2, 2004). For a website dedicated to cataloging “Republican Sex Criminals,” see *Republican Sex Criminals*, at <http://www.johnjemerson.com/zizka.sex.htm> (last visited Feb. 21, 2005).

181. Frank Rich, *How Kerry Became a Girlie-Man*, N.Y. TIMES, Sept. 5, 2004, available at <http://209.157.64.200/focus/f-news/1207620/posts>. Rich also wrote:

Any voter who’s undecided by now in this polarized election isn’t sitting around studying the fine points. In a time of fear, the only battle that matters is the broad-stroked cultural mano a mano over who’s most macho. And so both parties built their weeklong infotainments on militarism and masculinity, from Mr. Kerry’s toy-soldier “reporting for duty” salute in Boston to the special Madison Square Garden runway for Mr. Bush’s acceptance speech, a giant phallus thrusting him into the nation’s lap, or whatever . . . with the high stakes of an election at hand, it’s not enough to stuff socks in the president’s [sic] flight suit. Mr. Kerry must be turned into a girl. Such castration warfare has been a Republican staple ever since Michael Dukakis provided the opening by dressing up like Snoopy to ride a tank . . . For Memorial Day weekend, the redoubtable New York Post published hypothetical barbecue memos for the two contenders, with Mr. Bush favoring sausage and beer (albeit nonalcoholic) and Mr. Kerry opting for frogs legs, chardonnay and crème brûlée. Ann Coulter, that great arbiter of the marriage bond, posted a column titled “Just a Gigolo” in which the presumptive Democratic candidate was portrayed as “a poodle to rich women.” Eventually John Edwards would become “the Breck girl,” and Dick Cheney would yank an adjective out of context to suggest that Mr. Kerry wanted to fight a “sensitive” war on terror. (For a translation of “sensitive” in this context, see “French” above.) . . .

But Mr. Kerry, having joined the macho game with Mr. Bush on the president’s own cheesy terms, is hardly innocent in his own diminishment. From the get-go he’s tried to match his opponent in stupid male tricks. If Mr. Bush clears brush in Crawford, then Mr. Kerry rides a Harley-Davidson onto Jay Leno’s set. When the Democrat asks “Who among us does not love Nascar?” and lets reporters follow him around on a “day off” when his errands include buying a jock strap, he is asking to be ridiculed as an “International

Putatively 'liberal' men cannot resist the rhetorical power of derogatory feminization either, characterizing Bush as less than manly by making observations such as, "he was a cheerleader in high school. How girlie is that?"¹⁸² Analyst, comedian and Bush critic Bill Maher declared in print: "Excuse me, this president isn't resolute: He's on the rag."¹⁸³ Maher once said of Janet Reno that he loved her because she was the only person in the Clinton Administration with balls, and that if she were a woman he would marry her.¹⁸⁴

Commentators also chronically invoke colloquial terms for female reproductive organs to derogate antagonists, leading one observer to retort: "Do I have this straight? It's a good thing to get some pussy, a bad thing to be one, and absolutely loathsome to have one."¹⁸⁵ In fairness, this author notes that her initial reaction to this screed, an observation that men

Man of Mystery." . . . [H]aving brought Vietnam up against the backdrop of our 2004 war, Mr. Kerry has nothing to say about it except that his service proves he's more manly than Mr. Bush. Well, nearly anyone is more manly than a president who didn't have the guts to visit with the 9/11 commission unaccompanied by a chaperone. . . . The truth is that Mr. Kerry was a man's man not just when he volunteered to fight in a losing war but when he came home and forthrightly fought against it, on grounds that history has upheld. Unless he's man enough to stand up for that past, he's doomed to keep competing with Mr. Bush to see who can best play an action figure on TV. Mr. Kerry doesn't seem to understand that it takes a certain kind of talent to play dress-up and deliver lines like "Bring it on." In that race, it's not necessarily the best man but the best actor who will win.

Id.

182. Paul Waldman, *Girlie Man: George W. Bush Is a Coward* (Sept. 13, 2004), at <http://gadflyer.com/articles/?ArticleID=205>.

183. Bill Maher, *New Rule: Everyone Has to Stop Pretending that George Bush Is So Macho* (Oct. 8, 2004), available at <http://www.salon.com/opinion/feature/2004/10/08/newrule/index.html>.

184. *Politically Incorrect With Bill Maher* (ABC television broadcast, Apr. 25, 2000), available at http://trconnection.com/~todd/pi/html/transcript_20000425.html (last visited Jan. 25, 2005); see also *supra* notes 142-45, 159 and accompanying text.

185. *A Good Day for Some Pussy*, at <http://desfemmes.blogspot.com/2004/09/good-day-for-some-pussy.html> (Sept. 1, 2004) ("Atrios says: 'Suck it up if you're unemployed. Pussies.'" (citing Atrios, *Girly Men*, at <http://atrios.blogspot.com/2004/08/girly-men.html> (Aug. 31, 2004))) "Giblets says: 'And all this on compassion night! Man, I thought all these speeches were gonna [sic] be for pussies.'" (citing Giblets, *Recap: Night 1 of the RepNatConSpec!*, at http://fafblog.blogspot.com/2004_08_29_fafblog_archive.html (Aug. 31, 2004)). Kevin Drum says:

Overwhelmingly, liberal bloggers seem to feel that if they watch the Republican convention speakers any longer they will explode. So they aren't. Even the ones who are specifically in New York to cover the convention can't stand it and are mostly hanging out and just chatting with each other. Pussies.

Id.; see also *Absolutely Shameful*, SQUARED (Aug. 27, 2004) at <http://desfemmes.blogspot.com/2004/08/absolutely-shameful-squared.html>.

who call each other derogatory terms for female genitalia are dicks, was the tiniest bit hypocritical.

IX. CONCLUSION

Writing about women lawyers is a somewhat nerve wracking proposition. This author has at times noted the truth in one commentator's observation that "women in feminism have been harder on one another than they have been on men, just as at other times they offer one another greater support and encouragement."¹⁸⁶ Every academic publication produced potentially exposes the author to criticism and disparagement. To pen a less-than-stellar law review article about some doctrinal area of the law might subject the author to career-crimping charges of inadequate intellect. To write a mediocre article about women, however, is to risk being labeled by people whose opinions actually matter at an emotional level as an inferior feminist as well as a substandard scholar or, far worse, as a collaborator or oppressor.

Whenever possible, women need to look out for each other. We hold few partnerships at law firms large or small. We represent a small proportion of the university professoriate¹⁸⁷ and make up a small percentage of the faculty at post-graduate institutions.¹⁸⁸ Our numbers among elected officials are small.¹⁸⁹ Our representation

186. Cary Nelson, *Men, Feminism: The Materiality of Discourse*, in *MEN IN FEMINISM* 153, 163 (Alice Jardine & Paul Smith eds., 1987); see also Rebecca Traister, *I Am Woman, Hear Me Bore*, at http://www.salon.com/mwt/feature/2004/11/23/citizen_girl/index.html (Nov. 23, 2004) ("It was at this job that I began to think that sometimes women — especially the hard-driven, shoulder-padded ones who came of age in the 1980s — could be harder on each other, and on their younger female employees, than on their male counterparts.").

187. Lee E. Teitelbaum, *First-Generation Issues: Access to Law Schools*, in *PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY* (1997), available at <http://www.aals.org/teitelba.html>.

188. Association of American Medical Colleges, *Table 9, Distribution of U.S. Medical School Faculty by Sex and Rank*, in *FACULTY ROSTER*, available at <http://www.aamc.org/data/facultyroster/usmsf03/03table9.pdf> (last visited Oct. 23, 2004) (showing that women made up 30.8 percent of all medical school faculty members in 2003); E.D. TABS, NATIONAL CENTER FOR EDUCATION STATISTICS, *THE GENDER AND RACIAL/ETHNIC COMPOSITION OF POSTSECONDARY INSTRUCTIONAL FACULTY AND STAFF, 1992-98* 15 (2002), available at <http://nces.ed.gov/pubs2002/2002160.pdf> (showing that women made up 26.9 percent of all business school instructional faculty and staff members in 1998); RICHARD A. WHITE, ASSOCIATION OF AMERICAN LAW SCHOOLS, *STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS 2002-2003*, at <http://www.aals.org/statistics/2002-03/page.2.html> (last visited Oct. 23, 2004) (showing that women made up 30.4 percent of all law school faculty members in 2002-03).

189. CENTER FOR AMERICAN WOMEN IN POLITICS, *WOMEN IN ELECTIVE OFFICE 2004* (2004), at <http://www.cawp.rutgers.edu/Facts/Officeholders/elective.pdf> (last visited Jan.

in the judiciary is tiny.¹⁹⁰ Despite Margaret Brent's impressive early path-breaking, it took hundreds of years for women to become legally and normatively capable of enrolling in law schools in numbers equal to men.¹⁹¹ It may well be another hundred years or more before we are equally represented throughout the legal profession. Consequently, the gatekeepers of the legal profession remain largely male. A woman nominated for a judgeship must be evaluated and confirmed by the male-dominated U.S. Congress or by a state legislature that is also likely to be comprised largely of men. Most of the partners making partnership decisions at the vast majority of law firms in this country are male.¹⁹² Men numerically dominate faculty hiring, tenure and promotion decisions at almost every law school in the United States.¹⁹³

Female attorneys need to treat each other as if we are unequivocally equal to men. Men who would write off a woman lawyer as 'some dumb girl' should not be given any tacit support or unconscious affirmation by those they would ignore or dismiss. Although we cannot force men to respect us, we can take ourselves seriously, even while flexing our well-endowed and shapely (but never cosmetically enhanced) senses of humor.

18, 2005) ("In 2004, women hold 74, or 13.8%, of the 535 seats in the 108th U.S. Congress In 2004, 81 women hold statewide elective offices across the country; women hold 25.7% of the 315 available positions.").

190. United States Census Bureau, *Statistical Abstract of the United States: 2003* 399 (2003).

191. *Report: Law School Applications from Women Exceed Those from Men for the First Time*, Aug. 23, 2004, at <http://archives.cnn.com/2000/LAW/08/23/lawschool.women/>; Patricia A. Bass, *Law School Enrollment and Employment for Women and People of Color*, at <http://www.mcca.com/site/data/corporate/BP/Watch/nalp899.htm> (last visited Oct. 24, 2004); LSAC DATABOOK, *TAKING STOCK: WOMEN OF ALL COLORS IN LAW SCHOOL* (2003).

192. Equal Employment Opportunity Commission, *Diversity in Law Firms* (2003), at <http://www.eeoc.gov/stats/reports/diversitylaw/>; *Study Finds Female Lawyers Earning Less Than Male Counterparts* (June 2001), at <http://www.emplawyernet.com/jobfront/jf0601.cfm>.

While there are now more women than men entering US law schools, female lawyers are earning less than their male counterparts. An American Bar Association report has found that, on average, "female lawyers earn about \$20,000 less a year than male lawyers with the same qualifications and experience. The report, the most extensive ever completed on the subject, says that women constitute 30 percent of American lawyers but only 15 percent of law firm partners, 15 percent of federal judges, 10 percent of law school deans, 10 percent of general counsels and 5 percent of managing partners at law firms."

Id.

193. Christine Garton, *Law Schools: Still a Tough Market for Women*, (Sept. 20, 2004), at <http://www.law.com/jsp/article.jsp?id=1095207119654>.

Consider the trenchant and inspirational words of Rose Simone:

We need to stay confidently grounded in the fact that yes, we are seeking equality in very practical and visible ways. And yes, that's a big change, but that's what we want and that's what we believe in, and we believe it is important because we want balance in our relationships with each other and in the way that the world is governed and in the way that decisions are made.

We need to keep putting that message out persistently, and at every opportunity, in every mainstream and alternative media that we can get our hands on, so that we can transform this rapidly changing world into a world that we can all live in, equitably and in peace.¹⁹⁴

On that note, some final advice for aspiring women attorneys: Reject being treated as 'some dumb girl,' and refuse to tolerate it when other women are dismissed as 'dumb girls' in your presence. Support your sisters, and finally, always wear comfortable shoes.

194. Rose Simone, *Feminism in the Media and the '90s Backlash* (Jan. 23, 1996), at <http://watserv1.uwaterloo.ca/~facassoc/simone.html>. This is an abridged version of the talk given by feminist journalist Rose Simone at the University of Waterloo on January 23, 1996. The talk was co-sponsored by the Status of Women and Inclusivity Committee (SWIC) of the Faculty Association of the University of Waterloo (FAUW), the Professional Women's Association (PWA), and the Federation of Students. *Id.*