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Richard K. Neumann Jr.

Maurice A. Deane School of Law at Hofstra University

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WOMEN IN LEGAL EDUCATION: A STATISTICAL UPDATE

Richard K. Neumann, Jr.*

INTRODUCTION

Are you just pissing and moaning, or can you verify what you're saying with data?

— One scruffy-looking man to another,
sitting at a bar, in a
New Yorker cartoon

In God we trust. All others must provide data.

— Sign occasionally found on
professors' doors in university
social science departments

Although in the social sciences *data* can mean a narrative based on observation regulated by a methodology designed to insure reliability, it often is assumed to be numbers. Numbers can tell stories, and this article is about some of the stories that a particular group of numbers tell.

In 2000, I published a study of all the publicly available statistics, as well as information that could be turned into statistics, on how women are treated in legal education.¹ Among other things, the statistics available at that time showed that “women who apply for admission to law schools have higher undergraduate grade averages than men who apply to law schools,”² but that in the first year of law school men, as a group, start receiving higher grade averages than women.³ On the faculty side, women were not applying for tenure-track jobs at rates that would equal their presence in the cohorts from which law school faculty initially are hired.⁴ When hired, “men [were receiving] a higher percentage of the associate professor appointments,” and “women [tended] to be appointed at the assistant professor rank.”⁵ Women were obtaining tenure at lower rates than men. Although data about faculty pay was sketchy, the available evidence showed instances in which “women [were] paid less than similarly qualified men within the same status and at the same experience levels.”⁶ “Perhaps the most stark finding [was] that *everywhere* in legal education the line between the conventional tenure track and the lesser forms of faculty employment [had]

* Professor of Law, Hofstra Law School. The author wishes to thank Amber McDonald and Vicki Ku for their research assistance.

¹ Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000).

² *Id.* at 313.

³ *Id.* at 321.

⁴ *Id.* at 336-37.

⁵ *Id.* at 340-41.

⁶ Neumann, *supra* note 1, at 313-14.

become a line of gender segregation.”⁷ This was because women were being hired into off-tenure-track jobs at extraordinarily high rates. Similar hiring patterns existed in deans’ offices and law school libraries, “as lesser jobs—assistant deans and non-director librarians, for example—are gender-stereotyped as female while the jobs above them on a status ladder have been variable or gender-stereotyped as male.”⁸ The statistics also showed a variety of other ways in which women were not faring as well as men in legal education.⁹

Has anything changed since then? In order to find out, this article analyzes the statistics available through July 2004.

I. WOMEN AS LAW STUDENTS

In 2000, it appeared that the majority of law students soon would be female. By 1997, women were earning almost 56% of undergraduate degrees.¹⁰ Virtually every year over the space of a generation, women had constituted a larger percentage of the law school applicant pool than they had the year before, and at the rate of gain then occurring, women would have become a majority of first-year law students by 2001 and a majority of all Juris Doctor students by 2003 or 2004.¹¹ By the Spring of 2001, this trend was being reported on the front pages of newspapers.¹²

But women have not become a majority of law students. Women were a majority of applicants in 2000 and 2001, but not a majority of the students who entered law school that fall. As Table 1 shows, the percentages of female applicants and enrolled first-year students have declined since then. This might be a cyclical result related to the 2000-2003 economy, or it might mean that the percentages of applicants and students will grow no further and instead will fluctuate within the ranges shown in Table 1.

⁷ *Id.* at 314.

⁸ *Id.* at 346.

⁹ *See id.* at 321, 323, 342 for discussion of gender and representation at producer schools and in the number of deans.

¹⁰ Ben Gose, *Colleges Look for Ways to Reverse a Decline in Enrollment of Men*, CHRON. OF HIGHER EDUC., Nov. 26, 1999, at A73.

¹¹ Neumann, *supra* note 1, at 314.

¹² *See, e.g.*, Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, March 26, 2001, at A-1, col. 6.

TABLE 1

**Female Percentages (%) of Admissions
Applicants and First-Year Students^a**

	1998	1999	2000	2001	2002	2003
Admissions Applicants ^b	48.0	49.3	50.2	50.2	49.7	49.2
First-Year Students ^c	47.5	48.6	49.4	49.4	48.7	47.8
Gap Between Female Percentage of Applicants and Female Percentage of First-Year Students	0.5	0.7	0.8	0.8	1.0	1.4

^a Applicants sought admission to the class entering in the fall of the year given. First-year students were enrolled that fall.

^b Calculated from Law School Admissions Counsel, *LSAC Volume Summary by Ethnic and Gender Group: Final End-of-Year Counts of Applicants to ABA Approved Law Schools* (2004), available at <http://www.lisacnet.org/LSAC.asp?url=lsac/data/vs-eg.htm> (last visited Oct. 18, 2004).

^c Calculated from American Bar Association, *First Year Enrollment in ABA Approved Law Schools 1947-2002 (Percentage of Women)*, available at <http://www.abanet.org/legaled/statistics/femstats.html> (last visited Oct. 18, 2004); see also Memorandum from David Rosenlieb, Data Specialist, ABA Section of Legal Education and Admission to the Bar, to Deans of ABA-approved law schools (Jan. 14, 2004), at <http://www.abanet.org/legaled/statistics/enrollment2003statistics.pdf> (last visited Oct. 18, 2004).

The female percentage of enrolled first-year students historically has lagged behind the female percentage of admissions applicants. No published study has provided an empirical explanation for the gap. Although Table 1 shows the gap growing from 1998 to 2003, it previously had narrowed and was 1.5 in 1996.¹³

Although the reasons are not clear, women generally earn higher grades than men in undergraduate school but do less well on the LSAT.¹⁴ The differentials shown in Table 2 are consistent with earlier years. From the 1993-94 through the 1997-98 academic years, the average female undergraduate GPA was .09 to .10 points higher than the male average every year,¹⁵ while the average male LSAT score was 1.7 to 1.9 points higher than the female average every

¹³ Neumann, *supra* note 1, at 315.

¹⁴ *Id.* at 320.

¹⁵ *Id.*

year.¹⁶ In 1997-98, the LSAT differential dipped to 1.3.¹⁷ Nevertheless, Table 2 appears to show a gradual return to the range of earlier years. Why would this be true *every* year? No one seems to know, at least in the empirical sense of knowledge.

TABLE 2
Gender Differentials in Law School Applicant
Undergraduate GPA and LSAT Scores ^a

	1998-99	1999-2000	2000-01	2001-02
Average UGPA				
Female	3.18	3.20	3.21	3.22
Male	3.08	3.11	3.12	3.12
<i>Female Differential</i>	.10	.09	.09	.10
	1998-99	1999-2000	2000-01	2001-02
Average LSAT				
Female	150.8	150.7	150.7	150.9
Male	152.0	152.2	152.2	152.5
<i>Male Differential</i>	1.2	1.5	1.5	1.6

^a Data for years 2001-2002: LAW SCHOOL ADMISSION COUNCIL, DATABOOK ON WOMEN IN LAW SCHOOL AND THE LEGAL PROFESSION 23 (2003). Data for other years: LAW SCHOOL ADMISSION COUNCIL, NATIONAL STATISTICAL REPORT: 1996-97 THROUGH 2000-2001 B-3 - B-5, C-3 - C-5 (2002). Differentials were calculated from the published data.

Linda F. Wightman's Law School Admission Counsel ("LSAC") longitudinal study of more than 25,000 students who entered law school in 1991 showed that although women get better grades than men in college, they get worse grades than men in law school.¹⁸ Wightman concluded that "many female law students are not performing academically as well as they could be or should be in the current legal education environment. The magnitude of the differences often is small in statistical terms, but the impact of those differences on class rank, self-esteem, and career opportunities cannot be addressed with the data. . . . These are critically important areas in need of systematic research."¹⁹

¹⁶ *Id.* at 321, table 6.

¹⁷ *Id.* at 320.

¹⁸ LINDA F. WIGHTMAN, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN 12, 27 (1996). The Wightman study is summarized at Neumann, *supra* note 1, at 320-21.

¹⁹ WIGHTMAN, *supra* note 18, at 27.

Although no study of comparable depth has been published since then,²⁰ evidence continues to accumulate showing that a significant number of women find the law school experience alienating.²¹ For example, a study of Columbia Law School students found that “first-year women were nearly three times more likely than men to report that they ‘never’ or ‘rarely’ volunteered in class,” although after the first year “this disparity had disappeared.”²² A much greater proportion of women than men reported feeling “less intelligent” during the first year than they did before entering law school.²³ “In all three academic years, women were nearly twice as likely as men to report ‘never’ or ‘rarely’ having contacted professors.”²⁴

II. WOMEN AS EMPLOYEES OF THE LAW SCHOOL

A. Deans, Associate Deans, and Assistant Deans

Table 3 shows the proportion of women occupying law school dean, professorial associate dean, and assistant dean positions during the 2003-04 academic year. Table 3 is drawn from statistics published by the Association of American Law Schools, of which the latest available is for 2002-03. More recent data on law school deans is obtainable from the American Bar Association. During 2003-04, 33 of 187 law school deans—18%—were female.²⁵ That is a good increase, a doubling of the percentage from 1990-91 and more than a doubling of the number (from fifteen female deans in 1990-91 to thirty-three in 2002-03).²⁶ But from 1990-91 to 1997-98, the number of female law school deans was static, fluctuating between twelve and fifteen, and during that time the female percentage of law school deans shrank because the total number of law schools grew.²⁷ From 1998-99 to the present, the number of female deans grew

²⁰ A study conducted by Richard Sander, Kris Knaplund, and Kit Winter will probably be published in the next year and may be inconsistent with the studies described in the text.

²¹ See Neumann, *supra* note 1, at 322 n. 22 for studies published before 2000. See also Sari Bashi & Maryana Iskander, *Methodology Matters*, 53 J. LEGAL EDUC. 505 (2003); Claire G. Schwab, Note, *A Shifting Gender Divide: The Impact of Gender on Education at Columbia Law School in the New Millennium*, 36 COLUM. J.L. & SOC. PROBS. 299 (2003).

²² Neumann, *supra* note 1, at 320-21.

²³ *Id.* at 325.

²⁴ *Id.* at 324.

²⁵ Calculated from AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMMITTEE DIRECTORY 2003-2004 36-51 (2004).

²⁶ Calculated from *id.* and Richard A. White, Association of American Law Schools, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2002-2003*, Table 2A, available at <http://www.aals.org/statistics> (last visited Oct. 29, 2004).

²⁷ *Id.*

at a rate averaging about three deans a year, and all the percentage gain occurred during that period.²⁸

TABLE 3

Female Percentages of Deans According to Rank ^a

	1990-91	1993-94	1996-97	1999-2000	2002-03 ^b
Law School Deans	9%	9%	8%	11%	16% (29 of 187)
Associate Deans With Professorial Titles	21%	24%	28%	30%	29% (82 of 285)
Associate Deans Without Professorial Titles	46%	48%	48%	53%	58% (103 of 179)
Assistant Deans ^c	63%	69%	70%	69%	69% (316 of 457)

^a White, *supra* note 26, at App. A, Table 2C (2002-2003 edition).

^b In this column, the numbers in parentheses after the percentages represent the number of women and the total number of jobs in 2002-03.

^c Only a handful of assistant deans, usually fewer than twenty per year, are also professors. They are excluded from the table because they are so few in number and because their statistical characteristics have more in common with professors than with nonprofessorial assistant deans.

²⁸ In 2000, the rate of gain had been 1.3 additional female law school deans per year, and at that rate the female percentage of deans would not have equaled the then-current female percentage of full professors (the population from which law school deans are largely drawn) until 2014 or later "unless there are dramatic changes in the way law school deans are hired." Neumann, *supra* note 1, at 324. At the present rate of gain of about three female deans per year, the female percentage of deans could equal the female percentage of tenured full professors in 2008, depending on whether the female percentage of tenured full professors grows in the meantime. (ABA accreditation standards require that, "[e]xcept in extraordinary circumstances," a law school dean be tenured. AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 205(c) (2003), available at <http://www.abanet.org/legaled/standards/chapter2.html> (last visited Oct. 29, 2004).

For two reasons, however, the increase in the number of female deans should be viewed with caution. First, the female percentage of law school deans is still *only* 18%. As a group, law school deans are overwhelmingly male. Second, including the intermediate years not listed in Table 3, the female percentage of every category other than law school deans has stabilized. For professorial associate deans, it has fluctuated in a narrow range between 27% and 30% every year since 1996-97.²⁹ For nonprofessorial associate deans,³⁰ the female percentage gradually increased until 2001-02 and then remained at around 58% for that and the following year.³¹ That increase might not be progress at all, but instead a relabeling of a gender divide.³² The female percentage of assistant deans has remained stable between 69% and 72% since 1992-93. In fact, from 1998-99 through 2002-03, the last academic year for which data is available, it has been 69% every single year.³³

This picture is as startling now as it was when the earlier study was published in 2000: the top jobs are overwhelmingly male, and the bottom ones are overwhelmingly female—in fact, stereotyped as female. As we shall see, it is replicated on faculties and in law school libraries as well.

B. Faculty Rank

Table 4 shows the female percentage of full-time teachers according to rank. It is drawn from statistics published by the Association of American Law Schools.³⁴ Those statistics exclude deans of all types as well as law library

²⁹ White, *supra* note 26.

³⁰ Most associate deans are also professors. Some are not because they have been hired to do purely administrative work. An associate dean for financial affairs, for example, might not have a law degree.

³¹ White, *supra* note 26.

³² At least part of the reason for the increase might have been job title inflation. A Director of Admissions can become an Assistant Dean of Admissions and later an Associate Dean of Admissions without substantial change in function or compensation—just as a professor who teaches contracts and related subjects can become a Distinguished Research Professor of Commercial Law. A comparison of the “Law Teachers by School” listings in ASSOCIATION OF AMERICAN LAW SCHOOLS, AALS DIRECTORY OF LAW TEACHERS 2003-2004 25-237 (2003) (hereinafter AALS DIRECTORY) with the same part of the DIRECTORY a decade earlier documents this epidemic. During the years listed in Table 3, the number of nonprofessorial assistant deans nearly doubled, from 236 to 457, and the number of nonprofessorial associate deans more than doubled, from 88 to 179. Certainly, administrative positions have proliferated as law schools have become more complicated to administer, but job title inflation might also create a misleading appearance of gender equity progress among nonprofessorial associate deans.

³³ White, *supra* note 26.

³⁴ The American Bar Association also publishes some faculty statistics by gender. The ABA’s statistics are calculated according to a formula that “makes perfect sense for the purpose for which [the ABA] gathers these statistics in the first place: measuring the extent to which students have access to both women and men in instructional settings. But for the purpose of measuring the extent to which women have been given access to the conventional tenure track, those statistics are at best only partially reliable.” Neumann, *supra* note 1, at 330. The ABA statistics are published in

directors from the professorial statistics. Thus, a full professor who is also an associate dean is not counted in Table 4. A more troubling problem is that the AALS *Statistical Reports* count people according to their approximate job titles regardless of whether they are on or off tenure track. An associate clinical professor who was not on any kind of tenure track is counted in the AALS statistics (and therefore in Table 4) as an associate professor. Because these numbers are so widely available, we should begin with them.

TABLE 4

Female Percentages of Full-Time Teachers, According to Rank^a

	1990-91	1993-94	1996-97	1999-2000	2002-03 ^b
Full Professors	13%	16%	19%	22%	25% (1179 of 4681)
Associate Professors	35%	40%	44%	46%	47% (558 of 1191)
Assistant Professors	46%	51%	51%	48%	50% (378 of 755)
Lecturers and Instructors	62%	67%	68%	68%	67% (406 of 610)

^a White, *supra* note 26, at App. A, Table 2C (2002-2003 edition).

^b In this column, the numbers in parentheses after the percentages represent the number of women and the total number of jobs in 2002-03.

Since 1990-91, the female proportion of full professors—including off-tenure-track skills teachers whose job titles include the word “professor” but not the words “assistant” or “associate”—increased at a rate of about one percentage

two places in AMERICAN BAR ASSOCIATION & LAW SCHOOL ADMISSION COUNCIL, ABA/LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS [hereinafter, ABA/LSAC GUIDE], which is published annually. In the 2005 edition, which was published in the Spring of 2004 and includes statistics for the 2003-04 academic year, numbers of male and female teachers are published in each law school’s two-page statistical spread in Chapter 13. The “Full-time” line for each school mingles conventionally tenured or tenure-tracked faculty with teachers who have or are eligible for clinical tenure or have or are eligible for contracts of three years or more. That makes it impossible to determine the extent to which women are being hired onto the conventional tenure track or are instead being given lesser forms of job security. In addition, in Chapter 12, a female percentage of faculty (“% Women”) is listed for each school, but that percentage includes not only the mingled numbers in Chapter 13, but also off-tenure-track teachers with contracts of less than three years and even part-time adjunct faculty.

point per year. In 2000, I projected that “at this rate of gain women would not constitute a third of teaching full professors until about the year 2010 and would not constitute 40 percent of teaching full professors until about 2017.”³⁵ The female rate of gain has not increased since then, and therefore those projections are still accurate, although we will see in Tables 5 and 6 that there is a more realistic way to look at these numbers (which is not more optimistic).

Since 1996-97, and including intermediate years not shown in Table 4, female associate professors (including off-tenure-track skills teachers whose job titles included the phrase “associate professor”) have made very small gains of about half a percentage point per year. Since 1991-92, the female percentage of assistant professors (with the same qualification) has stabilized and fluctuated between 47% and 52%. Since 1991-92, the female percentage of lecturers and instructors has fluctuated between 65% and 71%.

The 2000 study cautioned that:

The higher percentages of women among associate and assistant professors are *not* grounds for optimism that the current rate of growth can be increased. First, assistant professors as a group are too small a proportion of the whole to constitute a serious pipeline. . . . [A]ssistant professors together are only 9 percent of the teaching professoriat [in 2002-2003, 11 percent] and even less than that when professorial deans and law library directors [are counted as well]. Nearly three-quarters of the teaching professoriat are now full professors, which is still true Second, . . . women appear to be gaining tenure at lower rates than men. If that continues, the population now at the assistant professor level will become less female as it moves through the process of contract renewals and tenure candidacies.³⁶

The most recent statistics in Table 4 continue to justify this warning about unwarranted optimism. The numbers of associate and assistant professors are so few that even if *all* of them were promoted to full professor, the female percentage of full professors would grow only from the 23% reported in Table 5 to 29% (1697 of 5953, the sum of the first three lines in Table 5). The 2000 study also cautioned that, “[t]he female percentages of lecturers and instructors are so steadily high that those jobs, like assistant deanships, have become stereotyped as female. Here, too, the stability of the statistics suggests that this situation, if left undisturbed, will continue indefinitely.”³⁷ That is still true.

A problem with the statistics in Table 4 is that teachers of very different statuses can be counted together because their job titles have words in common. An associate clinical or legal writing professor will be counted together with associate professors teaching doctrinal courses, even if the clinician or legal writing professor is not on any kind of tenure track and earns a fraction of what the doctrinal associate professors earn. Compare the percentages in Table 5 with those in the last column of Table 4.

³⁵ Neumann, *supra* note 1, at 325.

³⁶ *Id.* at 325-26 (italics omitted).

³⁷ *Id.* at 326.

TABLE 5

**Female Percentages of Faculty, According to Rank,
with Skills Job Titles Separated, 2002-03 Academic Year ^a**

Full Professors	23% (1031 of 4417)
Associate Professors	43% (417 of 974)
Assistant Professors	44% (249 of 562)
Clinical or Legal Writing Professors	62% (418 of 674)
Lecturers and Instructors (including clinical or legal writing lecturers and instructors)	67% (406 of 610)

^a Calculated from Association of American Law Schools, *Job Security of Faculty (by gender) in the AALS Directory — Faculty with Missing Data Included (2002-03)* (unpublished table, copy on file with author). Deans and library directors are not included in these statistics. Numbers in parentheses after the percentages represent the number of women and the total number of jobs in 2002-03.

Table 5 shows how the historical statistics in fact overstate women's progress on law faculties. When skills teachers who are not on the conventional tenure track are removed from the numbers of full professors, the female percentage of full professors shrinks from 25% in Table 4 to 23% in Table 5. The female percentage of associate professors shrinks from 47% to 43%, and the female percentage of assistant professors shrinks from 50% to 44%. When clinical and legal writing professors are counted separately, we learn that they are 62% female.

In many lines of work, jobs can be divided into a primary category at the heart of the occupation, those with the best compensation, work assignments, and employment security,³⁸ and a satellite, secondary category, with depressed compensation, reduced job security, and work assignments that employees in the primary category want excluded from their own job descriptions.³⁹ Applying this construct to law faculties, Debra Branch McBrier found that "at the same time

³⁸ See Debra Branch McBrier, *Gender and Career Dynamics within a Segmented Professional Labor Market: The Case of Law Academia*, 81 SOC. DYNAMICS 1201, 1201-02 (2003), available at http://muse.jhu.edu/journals/social_forces/v081/81.4mcbrier.html (last visited Oct. 18, 2004).

³⁹ *Id.*

that women began to move into the law academic profession, the profession segmented into two tracks: a high-status, high-pay primary track of tenure-track jobs comprised mostly of men, and a lower-status, lower-pay secondary track of non-tenure-track jobs comprised mostly of women.⁴⁰ Combining data gathered from the *AALS Directory of Law Teachers* for 1989 through 1997 with survey data compiled by Deborah Merritt and Barbara Reskin, as well as faculty publications data from the usual computer databases (to establish faculty credentials), McBrier found that men move from the secondary market to the primary market more easily than women do.⁴¹ Several factors appear to be involved, but gender alone accounted for much of the immobility.⁴²

Table 5 is drawn from unpublished AALS statistics and not from McBrier's work, but the division between primary and secondary tracks can be seen there. The first three lines in the table—"Full professors," "Associate professors," and "Assistant professors"—correspond to McBrier's primary track. The fourth and fifth lines in the table—"Clinical or legal writing professors" and "Lecturers and instructors (including clinical or legal writing lecturers and instructors)"—correspond to her secondary track. The line of gender segregation identified in the 2000 study is in the same place.⁴³

C. Faculty Job Security

Statistics on different forms of job security are shown in two columns in Table 6. Column A shows the numbers and female percentages of professors whose job titles do not refer to skills teaching. Column B shows the numbers and female percentages of teachers whose job titles include the words "clinical," "legal writing," "lecturer," or "instructor."

It is a fair inference that all or nearly all the tenured professors listed in Column A of Table 6 enjoy the conventional form of tenure that teachers of doctrinal courses, such as Property or Corporations, have enjoyed or aspired to for generations. That does not mean that no skills teachers are counted in Column A. A number of conventionally tenured teachers teach skills courses, but they rarely have a qualifier like "clinical" in their job titles. The absence of such a qualifier in a professor's job title is a reliable indication that the tenure that professor enjoys or will be considered for in the future is the conventional and traditional kind. The alternative is commonly called clinical tenure. Conventional tenure is a stronger form of job security than clinical tenure. In addition, generally a teacher who is conventionally tenured or tenure-tracked (working toward tenure) enjoys more benefits than a teacher who is clinically tenured or tenure-tracked. At most schools, conventionally tenured or tenure-tracked teachers are paid substantially higher salaries and more easily obtain professional development resources such as travel and research grants.

⁴⁰ *Id.* at 1207.

⁴¹ *Id.* at 1216-18, 1240.

⁴² *Id.* at 1240.

⁴³ See Neumann, *supra* note 1, at 314, 333.

Conventionally tenured and tenure-tracked teachers vote on all issues presented in faculty meetings, but at a number of schools clinically tenured and tenure-track teachers are not allowed to vote on certain types of issues.

Teachers who are not tenured and are not on any form of tenure-track are said to be contract employees. Some contracts are for extended periods, such as five or seven years. However, the overwhelming majority of contract teachers are on one- or two-year contracts, and some are on at-will contracts, under which they can be discharged at any time for any reason or no reason at all. Contract teachers earn the lowest salaries in legal education, have the fewest professional benefits, and participate the least in law school governance. Many cannot vote in faculty meetings.

TABLE 6

**Female Percentages of Faculty, According to Form of Job Security,
2002-03 Academic Year^a**

	<i>Column A</i> Professors Whose Job Titles Do Not Refer to Skills Teaching	<i>Column B</i> Clinical and Legal Writing Professors, Lecturers & Instructors
Tenured (Column A) or Clinically or Similarly Tenured (Column B)	26% (1157 of 4495)	45% (60 of 132)
Tenure-tracked (Column A) or Clinically or Similarly Tenure- Tracked (Column B)	41% (377 of 930)	58% (52 of 89)
Contract (not on a tenure track)	38% (69 of 180)	68% (596 of 875)
Data not Reported to AALS	27% (94 of 348)	62% (116 of 188)

^a Calculated from Association of American Law Schools, *Job Security of Faculty (by gender) in the AALS Directory — Faculty with Missing Data Included (2002-03)* (unpublished table; copy on file with author). Deans and library directors are not included in these statistics. Numbers in parentheses after the percentages represent the number of women and the total number of jobs in 2002-03.

Although 41% of teachers on a conventional tenure track are female, the number involved is so small that even if every conventionally tenure-tracked teacher were to achieve tenure, the female percentage of conventionally tenured teachers would grow only from the 26% reported in Table 6 to 28% (1534 of 5455, the sums of the first two lines in Column A). But, even that might not happen, as there is some evidence that women achieve tenure at lower rates than men.⁴⁴

Women make up 26% of teachers with conventional tenure, but 45% of those with clinical tenure. They are 41% of teachers on a conventional tenure track, but 58% of those on a clinical tenure track. They are also two-thirds of the contract skills teachers.

Table 6 shows that the largest groups of teachers in legal education are professors who enjoy conventional tenure (26% of whom are female), professors on a conventional tenure track (41% female), and skills teachers who are neither tenured nor on a tenure track (68% female). It is still true that the least secure, least compensated, and lowest status teaching jobs in law schools are predominantly female.⁴⁵

In a 2003 survey of law school libraries, females were 50% of library directors; 66% of associate, deputy, and assistant directors and branch chiefs; and 68% of supervisory librarians.⁴⁶ Since the natural recruiting ground for directors is among the population of associate, deputy, and assistant directors, the difference between the female percentages of the two categories raises the question of why so many fewer directors are women than the next rank down.

Two studies conducted prior to 2000 showed that within the conventional tenure track women were achieving tenure at lower rates than men.⁴⁷ No comprehensive statistical study on this subject has been published since then.

D. Faculty Pay

Statistics on faculty pay are scarce, but what little evidence is available does not reassure the notion that men and women are being treated equally. Only

⁴⁴ Neumann, *supra* note 1, at 336-37.

⁴⁵ Virtually no data on salaries for conventionally tenured and tenure-tracked faculty are published, but faculty with that type of status can recognize the difference between what they earn and what off-tenure-track faculty earn. The Association of Legal Writing Directors and the Legal Writing Institute jointly survey their members annually on this and a wide range of other issues. The 2003-04 average salary for full-time, off-tenure-track legal writing teachers ranged from \$50,654 to \$61,788, depending on the type of employment arrangement involved. Association of Legal Writing Directors & Legal Writing Institute, *2004 Survey Results* 58 (2004), available at <http://www.alwd.org>. Legal Writing directors are paid more than those figures, but female directors are paid less than male directors are. See *infra* Tables 7 and 8.

⁴⁶ Association Research, Inc., American Association of Law Libraries, *AALL Biennial Salary Survey and Original Characteristics* S-40, S-42, S-44 (2003), at http://www.aallnet.org/members/pub_salary03/2003_Salary_Survey.pdf (last visited Oct. 18, 2004) (password required).

⁴⁷ See Neumann, *supra* note 1, at 336-37.

legal writing and library organizations survey their members and collate the published results by status and gender. Table 7 shows gender pay differentials among legal writing directors.

TABLE 7
Average Legal Writing Director Salaries,
by Length of Work Year^a

	<i>2000-01</i>	<i>2001-02</i>	<i>2002-03</i>	<i>2003-04</i>
On a 9-month Work Year ^b				
<i>Female</i>	\$75,086	\$79,220	\$82,393	\$82,834
<i>Male</i>	84,115	80,710	88,760	102,278
On a 12-month Work Year				
<i>Female</i>	77,163	80,775	82,119	90,382
<i>Male</i>	91,615	94,227	98,071	94,500

^a Association of Legal Writing Directors & Legal Writing Institute, *2004 Survey Results* at A-1 (2004).

^b The 9-month contracts group includes directors who are conventionally tenured or tenure tracked. Other forms of job security could appear in either the 9-month group or the 12-month group.

Table 8 shows that these pay differentials are not explained by males having more directing experience than females.

TABLE 8
Average Legal Writing Director Salaries,
by Number of Years Directing at the Present Law School ^a

	2000-01	2001-02	2002-03	2003-04
0 to 5 years				
<i>Female</i>	\$73,647	\$75,303	\$77,946	\$80,246
<i>Male</i>	85,558	75,091	92,000	81,571
6 to 10 years				
<i>Female</i>	79,035	81,237	83,352	86,767
<i>Male</i>	70,500	102,500	91,375	111,500
11 to 15 years				
<i>Female</i>	83,793	81,850	78,292	87,170
<i>Male</i>	79,741	103,120	111,031	74,250
16 years or more				
<i>Female</i>	101,550	104,571	101,667	99,815
<i>Male</i>	85,000	92,000 ^b	92,000 ^b	111,638

^a Association of Legal Writing Directors & Legal Writing Institute, *2004 Survey Results A-3* (2004).

^b Based on only one response.

Table 9 shows average and 90th percentile salaries for librarians of various ranks. Although men, on average, earn more, the difference is not huge. The startling figures in Table 9 are the 90th percentile salaries for library directors, where the 90th percentile male earned \$40,328 more than the 90th percentile female. The gender disparity at the high end of the library director pay scale may be related to the fact that during the 2003-04 academic year, the library director was male at ten of the thirteen producer law schools discussed in Part III of this article.⁴⁸

⁴⁸ See *infra* Table 10 as well as the producer schools' listings in the AALS DIRECTORY, *supra* note 32, at 27-219.

TABLE 9
2003 Law School Librarian Salaries^a

	<i>Average</i>	<i>90th Percentile</i>
Library Directors		
<i>Female</i>	\$ 120,684	\$ 151,396
<i>Male</i>	122,652	191,724
Associate, Deputy, and Assistant Directors and Branch Chiefs		
<i>Female</i>	69,322	90,000
<i>Male</i>	70,899	88,204
Supervisory Librarians		
<i>Female</i>	60,407	79,838
<i>Male</i>	61,597	76,248

^a Association Research, Inc., American Association of Law Libraries, *AALL Biennial Salary Survey and Originational Characteristics* S-40, S-42, S-44 (2003), at http://www.aallnet.org/members/pub_salary03/2003_Salary_Survey.pdf (last visited June 29, 2004) (password required).

E. Faculty Hiring

The 2000 study reported that during the 1990s the female percentage of faculty applicants using the AALS Faculty Appointments Register⁴⁹ was lower than the female percentage of the population of lawyers from which faculty typically are hired.⁵⁰ Although the female percentage of law school graduates has continued to rise since then, the female percentage of FAR applicants has actually fallen—widening the gap between the two statistics. The female percentage of law school graduates rose from 43% in 1992 to 48% in 2002.⁵¹ The female percentage of FAR applicants for faculty jobs, however, has stagnated after reaching peaks of 36% in 1993-94 and 37% in 1995-96 and 1997-

⁴⁹ The AALS Faculty Appointments Register (FAR) is a clearinghouse for faculty hiring. An applicant fills out a data sheet, which is distributed to every law school in the country. A school that is interested in the applicant schedules an interview at a conference held by AALS for that purpose.

⁵⁰ Neumann, *supra* note 1, at 341-42.

⁵¹ American Bar Association, *Degrees Awarded 1981-2002*, at <http://www.abanet.org/legaled/statistics/degrees.html> (last accessed July 6, 2004).

98.⁵² It fell to 30% in 2000-01 and 33% in 2001-02 and 2002-03.⁵³ No study has identified reasons for this, although it may be related to gender characteristics at the producer schools, which are explored in Part III of this article.

AALS statistics show that women are more likely than men to find entry-level faculty jobs without using the FAR.⁵⁴ That does not mean that women are more likely to find faculty jobs on the conventional tenure track or on any tenure track without using the FAR. The AALS statistic includes new hires with job titles pairing the words *assistant* or *associate* with the word *professor*.⁵⁵ That would include assistant or associate clinical or legal writing professors, who are very often hired outside the FAR. Similarly, the female FAR "success rate," as calculated by the AALS, continues to be slightly higher than the male "success rate."⁵⁶ But, in recent years the difference was "not statistically significant."⁵⁷ And the "success rate" includes any person who appears in one year's FAR and also appears in the next year's *AALS Directory*, even if hired as an off-tenure-track instructor.⁵⁸ Because off-tenure-track faculty are predominately female and at least some off-tenure-track hiring occurs through the FAR, the difference between the female and male success rates shrinks even further.⁵⁹ Finally, because so few women actually use the FAR, most FAR hiring is male.⁶⁰ In the academic years 2000-01 and 2001-02, 78 women and 147 men were hired through the FAR.⁶¹ In those years, the faculty hired through the FAR were 35% female and 65% male.⁶²

The 2000 study reported that men are more likely than women to be hired as associate professors rather than as assistant professors.⁶³ This, also, is still true.⁶⁴

⁵² White, *supra* note 26, at Table 6A.

⁵³ *Id.*

⁵⁴ *Id.*, at Table 8B.

⁵⁵ *Id.*

⁵⁶ *Id.*, at Table 7B.

⁵⁷ White, *supra* note 26, at 14.

⁵⁸ Neumann, *supra* note 1, at 342.

⁵⁹ *Id.* at 333.

⁶⁰ *Id.* at 342.

⁶¹ White, *supra* note 26, at Table 7B.

⁶² *Id.* at Table 8B.

⁶³ Neumann, *supra* note 1, at 340. The AALS recently has revised very slightly the statistics on which this conclusion was based. Some newly hired professors do not report their gender on the first AALS forms they fill out, but do on later forms. AALS used the later information to fill in gaps in earlier data and made revisions in its *Statistical Reports*. See White, *supra* note 26, at App. A, Table 2C (2002-2003 edition). The result is that six of the numbers in Table 2C of the 2000 study are now inaccurate—four of them by a single percentage point. None of this changes the overall impression created by that table.

⁶⁴ *Id.*

III. THE PRODUCER SCHOOL PROBLEM

Table 10 lists thirteen schools whose graduates historically have made up a large proportion of law faculties, a condition likely to continue in the future. Often called “gatekeeper” or “producer” schools, their entering classes generally have the highest LSAT scores.⁶⁵ Two LSAT scores appear in Table 10. The first represents the 75th percentile of the school’s entering class. The second represents the 25th percentile.

Table 10

**Producer Schools Identified:
Average of Fall 2002 and Fall 2003
LSAT 75th and 25th percentiles^a**

	75 th	25 th
Yale	174.5	168.5
Harvard	173.5	168
Columbia	173	166.5
NYU	172.5	168
Chicago	171	167
Stanford	170.5	166
Georgetown	169.5	166
Northwestern	169.5	165.5
Pennsylvania	169	164.5
Virginia	169	164.5
Duke	169	163
Michigan	168.5	163.5
Berkeley	168	160.5

^a Averaged from ABA/LSAC GUIDE, *supra* note 34, at ch. 12 (2004 and 2005 editions).

Table 11 shows the female percentages of student bodies at these schools during the last two years for which statistics are available.

⁶⁵ The 2000 study listed twelve producer schools. Northwestern has been added here because its LSAT statistics have risen into the prior group of twelve. See Neumann, *supra* note 1, at 318.

Table 11

**Female Percentages of J.D.
Student Bodies at Producer Schools:
Average of Fall 2002 and Fall 2003^a**

Berkeley	60.6%
Stanford	50.9
Georgetown	49.6
All J.D. Students at ABA-Approved Schools	48.9
Columbia	48.7
NYU	48.7
Northwestern	48.4
Pennsylvania	47.7
Yale	46.8
Duke	46.0
Harvard	43.8
Michigan	43.0
Virginia	42.4
Chicago	42.2

^aCalculated from ABA/LSAC GUIDE, *supra* note 34, at ch. 12 & App. A (2004 and 2005 editions).

Table 11 closely resembles a corresponding table in the 2000 study, which reported female student percentages for Fall 1996 through Fall 1998.⁶⁶ There, three producer schools exceeded the national average, and all the others fell short.⁶⁷ The same thing is true in Table 11, and two of those three schools are the same in both tables. Although most producer schools are close to the national female percentage of law students, the overwhelming majority falls below it.⁶⁸ Moreover, the same five schools are at the bottom of both tables, though in a different order. What makes this all the more remarkable is that a law school's student body is completely replaced every three years (or four years for a school with a part-time division).⁶⁹ The student bodies covered by the table in the 2000 study graduated before the period covered in Table 11, which reports only students admitted afterward. Why would these patterns persist at individual

⁶⁶ See Neumann, *supra* note 1, at 319, Table 5 (left numerical column).

⁶⁷ See *id.*

⁶⁸ *Id.* at 350.

⁶⁹ *Id.* at 320.

producer schools despite the complete replacement of student bodies in the interim, and why are most producer schools consistently below the national average?

The proportion of producer school students who are female can influence the gender composition of all law schools.⁷⁰ So can the nature of those students' experience: a rewarding experience can encourage a student to consider law teaching as a career, while an alienating experience can have the opposite effect.⁷¹

For each of the producer schools, Table 12 shows the 2003-04 female percentages of the conventionally tenured and tenure-track faculty and of the faculty outside the conventional tenure track. The percentages were calculated according to the same methodology used in the 2000 study for all law schools.⁷²

⁷⁰ See *id.*

⁷¹ Lani Guinier, *Lessons and Challenges of Becoming Gentlemen*, 24 N.Y.U. REV. L. & SOC. CHANGE 1, 4 (1998).

⁷² The 2000 study developed a census of every full-time law school faculty job in the country for the academic years 1996-97 through 1998-99, working from the job titles and biographical entries in the AALS DIRECTORIES for those years. The percentages in Table 12 were calculated from similar information for 2003-04 published in the AALS DIRECTORY for 2003-04. Professors, Associate Professors, and Assistant Professors were assumed to be conventionally tenured or on conventional tenure tracks. Instructors, lecturers, and people with titles qualified by "Clinical," "Legal Writing," or some equivalent were assumed not to be conventionally tenured or on conventional tenure tracks. The following were not counted: adjuncts; emeriti/emeritae; visitors, unless the school uses visitorships as a method of staffing off-tenure-track skills-teaching positions; university presidents, provosts, vice-presidents, and vice-provosts; fellows, except where the responsibilities are not significantly different from those given to instructors and lecturers elsewhere or the fellowship is merely an honorific attached to a professorial position; librarians, except for library directors (who were assumed to be on tenure-track or tenured unless their job titles include the terms instructor, lecturer, or the like); administrators, except where the word professor appears in the job title (which includes every law school dean and most associate deans) and except where the job title or biographical entry indicates that the primary responsibility is directing or teaching in a skills, legal writing, or academic support program. The following were counted: people on leave (counted at their home institution, but not one at which they might have been visiting) and people who have joint appointments involving both the law school and another department in the university, unless the job title or biographical entry indicates that their primary responsibilities are outside the law school. If a separate clinical tenure track involves limited job security or governance rights or is associated with inferior pay, it was not treated as the equivalent of a conventional tenure track. If the only significant difference between a tenure track for clinicians and the tenure track for doctrinal teachers is in the test for granting tenure, both were treated as conventional tenure tracks. Ambiguities were cross-checked through the school's website or other means. In the 2000 study, letters were sent to a dean at each school, providing the school's statistics from the Appendix and inviting the correction of any errors. That was not done for Table 12 because law school websites now include exhaustive faculty information and because the 2000 study (including responses by deans then) developed a comprehensive understanding of each school's employment practices.

Table 12

**2003-2004 Female Percentages of
Producer School Faculty, by Status^a**

	<i>Conventionally Tenured and Tenure-Track^b</i>	<i>Other Faculty</i>
NYU	33%	55%
Georgetown	32	83
All Faculties Nationally ^c	28.3	60.9
Stanford	28	79
Chicago	27	22
Michigan	25	35
Columbia	21	44
Yale	20	33
Virginia	20	60
Duke	20	77
Northwestern	20	76
Harvard	19	71
Berkeley	19	81
Pennsylvania	16	33

^a Calculated from data published in AALS DIRECTORY, *supra* note 32. For methodology, see *supra* note 72.

^b A school is ranked according to its conventionally tenured and tenure-track percentage. Apparent ties were resolved by fractions.

^c Calculated from data, *supra* Table 6. The national conventionally tenured and tenure-track figure combines the tenured and tenure-track lines in Table 6, Column A (1,534 female of 5,425). The other national figure combines the Table 6, Column B tenured and tenure-track lines and columns A and B contract lines (777 female of 1,276).

Table 12 also strikingly resembles a corresponding table in the 2000 study, which reported female faculty percentages for 1996-99.⁷³ In both tables, the same two producer schools exceed the national female percentage of conventionally tenured and tenure-track faculty, while all other producer schools fall below the national percentage.⁷⁴ Of the eleven producer schools falling

⁷³ See Neumann, *supra* note 1, at 345, Table 25. For Northwestern, which was not listed as a producer school in 2000, see *id.* at 353.

⁷⁴ *Id.*

below the national figure, two had the same female percentage of conventionally tenured and tenure-track faculty in 2003-04 that they did in 1996-99, and three others had a *smaller* female percentage in 2003-04 than they did in 1996-99. Considering the increasing percentages of female faculty generally over the same period shown in Table 4, that represents a remarkable lack of progress among producer schools.⁷⁵

The right-hand column in Table 12 reports the female percentage of faculty who are not conventionally tenure-tracked. Disregarding thirty-one schools with no teacher or only one or two teachers in this category, in 1996-99 the female percentage of off-tenure-track faculty was lower than the female percentage of conventionally tenured and tenure-track faculty at only one school in the country, and the difference between the female percentage of conventionally tenured (including tenure-track) faculty and that of other faculty was less than ten percentage points at only four schools (one of them a producer school).⁷⁶ At ninety-seven schools, the female percentage of other faculty exceeded the female percentage of conventionally tenured and tenure-track faculty by "30 percentage points or more," and at the remaining schools, the difference was between 20 and 30 percentage points.⁷⁷ That is why the 2000 study concluded that "the line between the conventional tenure track and lesser forms of faculty employment has become a line of gender segregation."⁷⁸ That same pattern can still be seen in Table 12.

If the producer schools are less female than legal education as a whole, could that be retarding progress toward gender equality in legal education? Put another way, could the slow growth of female faculty nationally be partly due to the fact that the producer schools are graduating fewer female potential teachers than they might, and that at least some of those they graduate are alienated from legal education? No study has tackled this question directly. But of the producer schools, the female student experience has been studied at Berkeley,⁷⁹ Columbia,⁸⁰ Penn,⁸¹ Stanford,⁸² and Yale,⁸³ and nearly all of these studies have documented the alienating effect of their form of education on women. Typically, these studies show that female students at producer schools find it harder than men to develop the mentoring relationships with faculty that lead to

⁷⁵ See *supra* Table 4.

⁷⁶ Neumann, *supra* note 1, at 333, 353-57.

⁷⁷ *Id.*

⁷⁸ *Id.* at 346.

⁷⁹ Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-90).

⁸⁰ Schwab, *supra* note 21, at 320-21.

⁸¹ Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994).

⁸² Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988).

⁸³ Bashi & Iskander, *supra* note 21; Paula Gaber, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).

later teaching jobs in law schools.⁸⁴ One researcher reported that “a substantial number of the women interviewed reported having no one whom they would call a mentor,” and those who had found a mentor tended to name female professors, professors of color, clinicians, and lecturers.⁸⁵ Faculty behavior that might be seen by at least some male students as goading toward competitiveness can be seen—quite legitimately—by women as dismissive.⁸⁶ These studies do suggest a problematic institutional culture at several of the producer schools, and although social science might require deeper methodologies and replication studies before reaching broad conclusions,⁸⁷ the existing studies are consistent with the statistics.

IV. CONCLUSION

The following statements are still true: the female percentage of applicants for admission is higher every year than the female percentage of enrolled first-year students;⁸⁸ every year among applicants, women, as a group, present higher undergraduate GPAs, while men, as a group, present higher LSAT scores;⁸⁹ for faculty hiring, women continue to use the FAR in smaller numbers than their presence in the potential applicant pool;⁹⁰ men are more likely than women to be hired at the higher rank of associate professor rather than as assistant professors;⁹¹ in the few sectors surveyed for salary and gender (legal writing and librarians), men tend to be paid more than women;⁹² and the producer schools continue to lag behind the rest of legal education in percentages of female students and percentages of female faculty conventionally tenured or on a conventional tenure-track.⁹³ The conspicuous improvement is that more female law school deans are being hired, but the number is still low.⁹⁴ And in deans’ offices, on faculties, and in libraries, the people with the best jobs are much more likely to be male than those in lower positions.⁹⁵ In deans’ offices and on

⁸⁴ See, e.g., Bashi & Iskander, *supra* note 21, at 514; Gaber, *supra* note 83, at 208-16.

⁸⁵ Gaber, *supra* note 83, at 215.

⁸⁶ See *id.* at 221:

When I first handed [the professor] a draft [of a research paper], it was about fifty pages, and he hands it back, after reading ten pages, and basically says, “I don’t get it.” . . . [H]e had no knowledge of this topic at all [even though] there was suggested background reading in my footnotes — basically he attributed it to . . . something that was missing from the paper rather than something that was missing in his pool of knowledge.

⁸⁷ See Richard K. Neumann, Jr. & Stefan H. Krieger, *Empirical Inquiry Twenty-Five Years after The Lawyering Process*, 10 *CLINICAL L. REV.* 349, 353-60, 368-75, 377-78 (2003).

⁸⁸ See *supra* Table 1.

⁸⁹ See *supra* Table 2.

⁹⁰ See *supra* text at notes 40-44.

⁹¹ See *supra* text accompanying note 50.

⁹² See *supra* Tables 7, 8, 9.

⁹³ See *supra* Tables 10, 11, 12.

⁹⁴ See *supra* Table 3 and text accompanying note 19.

⁹⁵ See *supra* Tables 3, 5, 6, and text accompanying note 37.

faculties, the line of gender segregation identified in the 2000 study is still there, with law school deans and tenured full professors overwhelmingly male and assistant deans and off-tenure-track skills teachers overwhelmingly female.⁹⁶

Why do these things persist? The 2000 study cited evidence that in academia, as elsewhere in life, people who are in a position to make or influence decisions about others tend, at least unconsciously, to credit what men do and discredit what women do, even if men and women are doing the same thing,⁹⁷ because of a tendency to consider males and male traits the "norm" in all situations other than those in which women predominate.⁹⁸ At about the same time the 2000 study was published, Ann C. McGinley summarized a much richer body of evidence of the same thing.⁹⁹ It is not just that men and women are seen differently, but they also interact with others differently—so that a male job applicant for a position on a predominantly male faculty (as nearly all law faculties are)¹⁰⁰ or a male student talking in a class taught by a male teacher will do things that connect with the men in charge.¹⁰¹ There are surely many other factors, but if we really want to find out why the statistics are what they are, a good start point is to examine our assumptions, no matter how well-meaning our stated beliefs might be.

⁹⁶ See *supra* Tables 3, 5, 6.

⁹⁷ Neumann, *supra* note 1, at 348-51.

⁹⁸ Ann C. McGinley, *!Viva La Evolucion!: Recognizing Unconscious Motive in Title VII*, 9 CORNELL J.L. & PUB. POL'Y 415, 436 (2000). "Seeing men as the 'norm' leads to the need to explain why women deviate from the 'norm,' a tendency which in turn stigmatizes women as 'the other'." *Id.*

⁹⁹ *Id.* at 434-36.

¹⁰⁰ See Neumann, *supra* note 1, at 353-57.

¹⁰¹ See McGinley, *supra* note 98, at 440-42.