

9-2000

# Women in Legal Education: What the Statistics Show

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## Recommended Citation

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

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# Women in Legal Education: What the Statistics Show

Richard K. Neumann Jr.

Sometimes numbers tell us what adjectives and adverbs cannot.

What can statistics derived from publicly available data establish about how women are being treated in legal education? This study is an attempt to find out. Its goal is to collate into one coherent picture the most significant data presently available. Among other things, this study reports a census of all faculty jobs at law schools approved by the American Bar Association, largely but not entirely based on faculty listings published in the AALS Directory of Law Teachers covering a three-year period, 1996–97 through 1998–99.

Part I examines the published data on the gender composition of students and applicants for admission together with gender differentials in first-year grading. Among other things, the statistics predict that women will very soon constitute the majority of law students nationally. For the most part, statistics that could illuminate whether women are being treated fairly after admission are not publicly available. There is one significant exception. Although women who apply for admission to law schools have higher undergraduate grade averages than men who apply to law schools, that differential reverses in the first year of law school, and men suddenly receive higher grades on average than the women.

Part II examines all the publicly available data on law faculty hiring, promotion, status, and pay. Because much more data is available on these questions, part II develops more depth than part I can. Among other things, the statistics show that women are not applying for tenure-track jobs at rates that would equal their presence in the cohorts from which law faculty are initially hired. A woman applying for a tenure-track job does not have a statistically better chance of being hired than a man does and might have statistically worse odds. At the point of hiring, men receive a higher percentage of the associate professor appointments while women tend to be appointed at the assistant professor rank. The available statistics suggest that women achieve tenure at lower rates than men. And there is evidence that women are paid less than

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For advice and assistance, I thank Judith F. Anspach, David F. Chavkin, Rachel Cherny, Eric M. Freedman, Marissa Goodman, Elizabeth Hader, Peter Joy, Susan King, Connie S. Lenz, Jan M. Levine, Sue Liemer, Gary Moore, Colin Padgett, Michelle Rostolder, Richard Soleymonzadich, and Richard A. White as well as administrators at a number of law schools whose thoughtful comments on and criticisms of the data, as it was being collected and verified, improved this study.

similarly qualified men within the same status and at the same experience levels. Perhaps the most stark finding is that *everywhere* in legal education the line between the conventional tenure track and the lesser forms of faculty employment has become a line of gender segregation.

Part III assesses the statistics reported in parts I and II.

Some of the statistics reported in this study are computed from data published by the Association of American Law Schools, the American Bar Association, the Law School Admission Council, and independent researchers. Much of that data was published in a form more raw than reported here; where I have computed the data from the original source, rather than merely reproducing it here, I have noted that in the footnotes or in the text introducing the statistics.

A substantial portion of the statistics reported here, however, comes from a database derived from the census of law faculty jobs mentioned above. Starting from three years of AALS directories, I categorized every law faculty job at an ABA-approved law school as located either on or off the conventional tenure track, and I determined the gender of the job's occupant for each of the three years. Before finalizing the database, I provided every law school with its own statistics and invited correction of errors. I used a three-year time span to iron out short-term fluctuations. (A complete explanation of the methodology appears in part II.)

## I. The Gender Composition of Law School Students and Applicants

### A. Overview

In every academic year from 1947–48 through 1966–67, women constituted either 3 or 4 percent of J.D. and LL.B. students—never less or more.<sup>1</sup> In 1967–68 the female percentage began to climb. In 1974–75 it reached 20 percent. In 1985–86 it reached 40 percent. At the rate of gain set out in Table 1, women will constitute a majority of applicants for admission to law school by the time this article appears in print, a majority of first-year law students by fall 2001, and a majority of all J.D. students by 2003 or 2004.

1. The statistics in this paragraph come from American Bar Association, First Year Enrollment in ABA Approved Law Schools, 1947–1999 (visited April 11, 2000) <[www.abanet.org/legaled/femstats.html](http://www.abanet.org/legaled/femstats.html)> [hereinafter First Year Enrollment]. Despite its name, this source contains data on law students in general and not merely in the first year.

Identical data, but going back only to 1963, is published at American Bar Association, Official American Bar Association Guide to Approved Law Schools, eds. Rick L. Morgan & Kurt Snyder, 451 (New York, 2001 edition) [hereinafter ABA-Approved Law Schools, with edition in parentheses]. Although intended for an audience of prospective law school applicants, this annual publication, first distributed in 1997, is so statistically rich that it is an excellent tool for scholarly research on a number of aspects of legal education. Because I cite it several times in this study, I should explain at the outset a quirk in the ABA book's dating: the edition date is always a year later than its copyright date, and the data it reports is from the autumn semester preceding the copyright date. The 1998 book (the first published) was copyrighted and distributed in 1997 and was based on the annual questionnaire submitted by law schools to the ABA in fall 1996. The 1999 book was published in 1998 and based on the fall 1997 questionnaire—and so on. In this study, I cite ABA-Approved Law Schools not by its copyright date, but by its edition date, which appears prominently on the cover and title page and which is how readers would naturally identify a volume.

For unknown reasons, however, the female percentage of enrolled first-year students lags behind the female percentage of applicants. The gap ranges from 0.3 to 1.5 percent. Although the gap persists in every year reported in Table 1, it has narrowed recently.

**Table 1**  
**Female Percentages of Admissions Applicants,**  
**First-Year Students, and J.D. Students<sup>a</sup>**

	1995	1996	1997	1998	1999
Admissions applicants <sup>b</sup>	45.5%	46.4%	46.9%	47.8%	49.2%
First-year students <sup>c</sup>	44.6	44.9	46.0	47.5	48.7
All J.D. students <sup>c</sup>	44.0	44.4	45.2	46.1	47.4

<sup>a</sup>Applicants generally sought admission to the class entering in the fall of the year given.

First-year students were enrolled beginning that fall.

<sup>b</sup>From table "ABA Applicants by Gender" in an untitled handout distributed by Philip D. Shelton, president and executive director, Law School Admission Council, at a meeting of the Council of the ABA Section of Legal Education and Admissions to the Bar, Feb. 13, 2000, Dallas, Texas (on file with author).

<sup>c</sup>Calculated from data in ABA-Approved Law Schools, *supra* note 1, at 454 (2001 edition).

The female percentage of law students will probably not stabilize at about 50 percent. Instead it will probably keep growing, just as the female percentage of undergraduate students has. In 1970, 43 percent of undergraduates were women.<sup>2</sup> In the first half of the 1980s, the national undergraduate population was evenly split between men and women. Since then the female percentage of undergraduates has continued to increase. In 1997 women earned 56 percent of baccalaureate degrees.<sup>3</sup>

### *B. Patterns in Female Percentages of Student Bodies*

When one looks at individual law schools, the rate of gain in admissions is much more uneven than the national picture shown in Table 1. The Appendix to this study shows the female percentage of the J.D. student body averaged from the autumns of 1996, 1997, and 1998 at every ABA-accredited law school.<sup>4</sup> Since roughly a third of a student body is replaced each year, student statistics can fluctuate substantially from year to year. For that reason, one

2. Andrew Brownstein, Admission Officers Weigh a Heretical Idea: Affirmative Action for Men, *Chron. Higher Educ.*, last modified Oct. 9, 2000, <<http://chronicle.com/daily/2000/10/2000100904n.htm>>.
3. Ben Gose, Colleges Look for Ways to Reverse a Decline in the Enrollment of Men, *Chron. Higher Educ.*, Nov. 26, 1999, at A73. Many traditionally male undergraduate fields are no longer male dominated. In business, for example, women earned 9 percent of bachelor's degrees in 1970 and 49 percent in 1996. *Id.*
4. Through 1999 the ABA had accredited 182 law schools that grant J.D. degrees. Consultant on Legal Education to the American Bar Association, Annual Report 34 (1998-99) [hereinafter ABA Consultant's 1998-99 Annual Report]. With one exception (Florida Coastal), all are listed in Table 2. Florida Coastal received provisional accreditation in 1999, and its statistics have not yet been published by the ABA. Only partial statistics appear in this study for three other provisionally accredited law schools (Chapman, Thomas Jefferson, and Western State) because they received provisional approval after 1994. One law school (Widener) appears twice because the ABA publishes separate statistics for its two campuses. Although the ABA has also accredited the U.S. Army Judge Advocate General's School, it is not included here because it does not award J.D. degrees.

usually needs an average of recent years to gain a meaningful view of a student body. In the Appendix schools are listed in descending order according to the female percentage of conventionally tenured and tenure-track *faculty*. The student data, although present there, is summarized here.

At the school with the highest three-year average, 67 percent of the students were women. At the school with the lowest average, 33 percent were women. At three schools 60 percent or more of the students were women. At 27 schools the female percentage was between 50 percent and 59 percent. At 125 schools it was between 40 and 49 percent. During the same three years 45.2 percent of all J.D. students nationally were women.<sup>5</sup>

I also collated the data in the Appendix geographically and by law school affiliation (public, private/nonsectarian, or religious). The results are set out below.

In general, the percentage of women in a school's student body does not correlate with the school's affiliation. At the 75 public law schools the average student body was 45 percent female from fall 1996 through fall 1998.<sup>6</sup> At the 66 private/nonsectarian law schools, that figure was 46 percent. And at the 41 schools with religious affiliations, it was 44 percent.<sup>7</sup> Among these three categories the differences are insignificant. Within each category, however, the differences from school to school can be substantial, as a glance at similarly categorized schools in the Appendix will show.

Geography appears to have something to do with the percentage of women in a typical student body. As Table 2 shows, urbanization directly correlates with higher percentages of women. It is not clear, however, whether urbanized schools more easily accept female applicants, whether women in urban areas are more interested in pursuing careers in law, or whether urban life provides less hostility and more support systems to women seeking careers in professions.

Table 3 shows the regional differences between female percentages of J.D. student bodies and applicants to law school. The student bodies shown in the first statistical column in Table 3 were drawn from the applicant pools listed in the second column. For example, a student who applied successfully during the 1993–94 cycle (the first year averaged into the applicant column) would typically have matriculated in 1994 and begun the third year of law school in fall 1996 (the first year averaged into the student body column). And a student who applied successfully during the 1997–98 cycle (the last year averaged into the applicant column) would have matriculated in fall 1998 (the last year averaged into the student body column).

5. Computed from data at ABA-Approved Law Schools, *supra* note 1, at 450 (2000 edition).

6. Three previously private and nonsectarian law schools that have recently affiliated or are attempting to affiliate with public universities are tabulated here as private and nonsectarian because their identities and practices were formed while they were private/nonsectarian (Detroit College, Michigan State; Dickinson, Pennsylvania State; South Texas, in litigation).

7. Schools that were originally founded by religious entities but no longer have a particular religious identity are counted here as private/nonsectarian.

**Table 2**  
Average Female Percentages of J.D. Student Body, by Type of Locality<sup>a</sup>

	<i>Average percentage</i>
CMSAs with populations > 5,000,000 <sup>b</sup> (58 schools)	48%
CMSAs and MSAs with populations 1,900,000–4,999,999 <sup>c</sup> (31 schools)	46
MSAs with populations 850,000–1,899,999 (31 schools)	45
MSAs with populations 250,000–849,999 (26 schools)	43
Small city or rural (33 schools)	41

<sup>a</sup>Percentages computed from column 4 in the Appendix. Locality types based on 1996 population estimates (the most recent available) from the U.S. Department of Commerce, published in Statistical Abstract of the United States 40–44 (Washington, 1999) [hereinafter Statistical Abstract].

A CMSA is a consolidated metropolitan statistical area. An MSA is a metropolitan statistical area.

The average percentages are for three years, fall 1996 to fall 1998. The table does not include the three ABA-accredited Puerto Rican schools.

<sup>b</sup>Eight CMSAs, as defined by the federal government, have populations exceeding 5,000,000: New York-Northern New Jersey-Long Island (includes Connecticut to New Haven and Danbury); Los Angeles-Riverside-Orange County; Chicago-Gary-Kenosha; Washington-Baltimore; San Francisco-Oakland-San Jose; Philadelphia-Wilmington-Atlantic City; Boston-Worcester-Lawrence; and Detroit-Ann Arbor-Flint.

<sup>c</sup>Fifteen MSAs and CMSAs have populations from 1,900,000 to 4,999,999: Dallas-Ft. Worth; Houston-Galveston-Brazoria; Atlanta; Miami-Ft. Lauderdale; Seattle-Tacoma-Bremerton; Cleveland-Akron; Phoenix-Mesa; Minneapolis-St. Paul; San Diego; St. Louis; Pittsburgh; Denver-Boulder-Greeley; Tampa-St. Petersburg-Clearwater; Portland-Salem; and Cincinnati-Hamilton.

**Table 3**  
Average Female Percentages of J.D. Student Bodies  
and Law School Applicants, by Region

	<i>Average percentage of student body<sup>a</sup></i>	<i>Average percentage of applicants<sup>b</sup></i>
Puerto Rico (3 schools)	55%	54%
California (19 schools)	47	48
Northeast <sup>c</sup> (50 schools)	47	47
West except California <sup>d</sup> (18 schools)	45	44
Midwest <sup>e</sup> (43 schools)	44	45
South <sup>f</sup> (49 schools)	43	45

<sup>a</sup>Computed from column 4 in the Appendix. The average percentages are for three years, fall 1996 to fall 1998.

<sup>b</sup>Computed from LSAC, National Statistical Report, *infra* note 8, at A-11 and C-11. The average percentages are for five years, 1993–94 through 1997–98.

<sup>c</sup>Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and West Virginia. The Northeast is listed after California because its unrounded percentage is lower.

<sup>d</sup>New Mexico, Arizona, Colorado, Utah, Nevada, Wyoming, Montana, Idaho, Oregon, Washington, and Hawaii. Alaska has no law school.

<sup>e</sup>Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, North Dakota, and South Dakota.

<sup>f</sup>Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, Louisiana, Arkansas, Texas, and Oklahoma.

During the period reported in Table 3, the only states where women were more than half the applicants were New Mexico (52%) and Hawaii (51%).<sup>8</sup> Women were 54 percent of the applicants in Puerto Rico, 51 percent in the District of Columbia, and 49 percent in Maryland. In 45 states the fe-

8. The applicant percentages reported in this paragraph were computed from Law School Admission Council, National Statistical Report, 1993–94 Through 1997–98, at A-11, C-11 [hereinafter LSAC National Statistical Report].

male percentage was between 41 and 48 percent. The states with the smallest percentages of women in the applicant pool were Idaho (36%) and Utah (28%).

Although the regional percentages reported in Table 3 are not very different from each other, there can be huge differences in the student body from school to school and in the applicant pool from state to state. Schools can be considered competitors if their LSAT profiles substantially overlap and if they are located in each other's vicinity, especially in the same state (except for the dozen or so truly national law schools). In some instances the disparities between schools that compete for the same students can be quite substantial and can repeat year after year. That is all the more surprising, given that roughly one-third of a student body is replaced annually. For example, the three-year average female percentage of students among midmarket schools in the New York City metropolitan area ranges from 54 percent at Pace to 40 percent at St. John's. Similar comparisons can be made by collating the student data for other groups of competing schools from the Appendix.

### *C. Female Students at Producer Schools*

Table 4 lists twelve schools that appear likely to graduate a high proportion of the law faculties of the future. From fall 1996 through fall 1999 the entering classes at these "gatekeeper" or "producer" schools had the highest LSAT scores in the country. Although the LSAT has not been validated as a predictor of anything other than first-year law school grades, it seems reasonable to assume some correlation between high LSAT scores and the type of academic skills that inspire confidence in traditional law faculty hiring. It also seems reasonable to assume that law faculty hiring in the immediate future will resemble law faculty hiring in the recent past. Two LSAT scores appear in Table 4. The first represents the 75th percentile of the school's entering class. The second represents the 25th percentile. Together, they provide a more focused picture of an entering class than a median or a mean would.

For context, Table 4 also reports the ranks assigned to these schools in two earlier studies that tried to identify the schools at which law teachers obtained their own J.D.s. Robert J. Borthwick and Jordan R. Schau sampled fifteen percent of the biographical entries for tenured or tenure-track teachers in the 1988-89 AALS Directory. Their database was not entirely representative. More teachers in it got their law degrees from the University of Mississippi than from Duke, UCLA, or Northwestern.<sup>9</sup> In the other study Donna Fossum counted all the tenured or tenure-track teachers in the 1975-76 AALS Directory.<sup>10</sup>

In both Borthwick and Schau's 1988-89 sample and Fossum's 1975-76 study, about 47 percent of the tenured and tenure-track teachers graduated from the schools listed in Table 4.<sup>11</sup> Although those two studies developed

9. Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors, 25 U. Mich. J.L. Reform 191, 194, 227 (1991).

10. Law Professors: A Profile of the Teaching Branch of the Legal Profession, 1980 Am. B. Found. Res. J. 501, 507.

rankings of producer schools that differed somewhat from the ranking in Table 4, the overall effect is not significantly different. The top twelve producer schools as ranked by Borthwick and Schau graduated 48 percent of the tenured and tenure-track teachers in their sample, and Fossum's top twelve producer schools also graduated 48 percent of the tenured and tenure-track teachers in the AALS Directory she studied.<sup>12</sup> Harvard and Yale together produced by far the largest number of tenured and tenure-track teachers—about one-fifth of the total in both studies.

**Table 4**  
**Producer Schools Identified**

	<i>1996–99 LSAT 75/25 percentiles<sup>a</sup></i>	<i>Borthwick &amp; Schau (1988–99) producer rank</i>	<i>Fossum (1975–76) producer rank</i>
Yale	175/168	2	2
Harvard	173/166	1	1
Chicago	172/166	4	5
NYU	171/166	6	6
Columbia	171/165	3	3
Stanford	171/165	13	14
Berkeley	170/162	8	10
Michigan	169/163	5	4
Duke	169/162	20	19
Georgetown	168/163	9	7
Virginia	168/163	7	9
Pennsylvania	167/163	12	11

<sup>a</sup>Averaged from ABA-Approved Law Schools, *supra* note 1, ch. 10 (1998 through 2001 editions). I used a four-year average to absorb one-year fluctuations.

**Table 5**  
**Female Percentages of J.D. Student Bodies at Producer Schools<sup>a</sup>**

	<i>3-year average, 1996–98</i>	<i>Fall 1994</i>	<i>Fall 1995</i>	<i>Fall 1996</i>	<i>Fall 1997</i>	<i>Fall 1998</i>	<i>Fall 1999</i>
Berkeley	51%	48%	49%	50%	51%	52%	55%
Georgetown	47	48	46	47	47	48	50
NYU	46	44	47	45	47	46	50
All J.D. students in U.S. law schools	45.2	43.3	44.0	44.4	45.2	46.1	47.4
Columbia	45	40	42	44	45	45	46
Stanford	43	45	45	45	42	43	45
Yale	43	43	45	43	43	43	45
Pennsylvania	42	41	40	41	42	43	46
Chicago	41	38	41	40	42	42	41
Duke	41	41	41	39	41	44	47
Harvard	41	39	41	41	42	42	43
Michigan	41	43	43	42	41	39	43
Virginia	37	39	39	37	37	37	43

<sup>a</sup>The three-year averages are from the Appendix. National averages are from Table 1. Fall 1994–95 statistics are from Section of Legal Education and Admissions to the Bar, American Bar Association, *A Review of Legal Education in the United States* Fall (1995 and 1996 editions). Fall 1996–99 statistics are from chapter 11 of ABA-Approved Law Schools, *supra* note 1 (1998 through 2001 editions). The three-year averages were computed from published percentages that had been carried out to one decimal point. That is why the Harvard three-year average differs slightly from the percentage one gets by averaging the rounded whole numbers for those years that appear in the table.

11. Borthwick & Schau, *supra* note 9, at 227; Fossum, *supra* note 10, at 507.

12. Borthwick & Schau, *supra* note 9, at 227; Fossum, *supra* note 10, at 507.

Taken as a group, the Table 4 producer schools appear to admit female students at almost the same frequency as the other 170 ABA-accredited law schools. Averaging over the three years from fall 1996 to fall 1998, women were 43 percent of the student body at the producer schools and 45 percent of the student body everywhere else. But as Table 5 shows, there are substantial differences *among* the individual producer schools. The first statistical column shows each school's average female percentage of the student body in the fall of 1996, 1997, and 1998, as reported in the Appendix. The other columns show the female percentage of each school's student body as measured in the fall of each year from 1994 through 1999.

*D. Gender Differentials in Undergraduate GPA, LSAT Scores,  
and Law School Grades*

Table 6 reports the average undergraduate GPA and average LSAT scores for female and male law school admissions applicants from the 1993–94 to 1997–98 application years. In each of these years the average female UGPA was 0.09 or 0.10 of a grade point higher than the male average. But in each of the same years the average male LSAT score was 1.3 to 1.9 points higher than the female average. The UGPA differential appears stable. The LSAT differential declined in the last two years and was at its smallest in the last year of the reported period.

**Table 6**  
**Gender Differentials in Undergraduate GPA and LSAT Scores<sup>a</sup>**

	1993–94	1994–95	1995–96	1996–97	1997–98
Average UGPA					
Female	3.13	3.13	3.15	3.16	3.16
Male	3.03	3.04	3.06	3.06	3.07
Female differential	.10	.09	.09	.10	.09
Average LSAT					
Female	151.5	150.6	150.7	150.7	150.7
Male	153.2	152.4	152.6	152.4	152.0
Male differential	1.7	1.8	1.9	1.7	1.3

<sup>a</sup>LSAC National Statistical Report, *supra* note 8, at B-1 through B-5 and C-1 through C-5.

Table 6 does not report the small proportion of applicants who relied on LSAT exams scored under the 10- to 48-point scale. Those applicants declined from 2 percent of the total in 1993–94 to nearly none in 1997–98. *Id.* at A-1 through A-5.

Working with the Law School Admission Council, Linda Wightman conducted a longitudinal study of more than 25,000 of the students who entered law school in fall 1991. The statistics for those students showed the same gaps that appear in Table 6.<sup>13</sup> The gender gaps in LSAT scores "are approximately equal to those found in [the GRE analytical and SAT verbal measures] and larger than the differences found in" the verbal portions of the GRE and GMAT and the verbal reasoning portion of the MCAT.<sup>14</sup> The undergraduate

13. Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men 11 (Newtown, 1996). The average female and male GPAs were 3.27 and 3.16, respectively, and the average female and male LSAT scores were 36.05 and 36.92. *Id.* The older LSAT scoring method was being used in 1991.

GPA differentials occurred across wide ranges of disciplines. "Women traditionally earn higher grades than men" in college and also in graduate school.<sup>15</sup> To test "the oft-cited claim that the higher undergraduate grades earned by women are a consequence of their self-selection into less rigorous and more leniently graded undergraduate major[s]," Wightman compared the female and male GPAs for undergraduate majors in business, computer science, engineering, the health professions, the natural sciences, and the social sciences among the students in her longitudinal study. In every category but engineering the women had, on average, higher GPAs than the men, and in engineering the GPAs were virtually a tie.<sup>16</sup>

The *Becoming Gentlemen* study found that although men and women were admitted to the University of Pennsylvania law school with similar credentials, men received higher grades throughout the period studied.<sup>17</sup> A study of law students at the University of Texas showed a similar differential.<sup>18</sup> Wightman examined first-year grades for the more than 25,000 students in her cohort and found "that while 53.9 percent of men earned first-year grades at or above the mean at their school . . . , only 50.6 of women earned comparable standing. . . . These distribution data are not so dramatic as [those in the *Becoming Gentlemen* study], but the pattern they observed at a single school is paralleled when national data are examined."<sup>19</sup>

It thus appears that as a group women get *better* grades than men in undergraduate school and *worse* grades than men in law school. Wightman's data "suggest that many women are not performing as well as they could be or should be in the current legal education environment. Although the magnitude of the differences often is small in statistical terms, the impact of those differences on class rank, self-esteem, and career opportunities" could not be addressed within the scope of her study.<sup>20</sup> The literature on the experience of women law students is, however, abundant. For example, a survey of students at the nine Ohio law schools found that 31 percent believed they had experienced sexual discrimination in law school, 45 percent felt deprived of female role models, and 41 percent (compared to 16 percent of the men) felt "less articulate and intelligent than prior to law school."<sup>21</sup> The *Becoming Gentlemen*

14. *Id.* at 15. The GRE is the Graduate Record Examination; the SAT is the Scholastic Aptitude Test; the GMAT is the Graduate Management Admission Test; and the MCAT is the Medical College Admission Test. *Id.*

15. *Id.* at 15. Female students also earn higher grades, on average, in high school, and two-thirds of high school National Honor Society members are female. Gose, *supra* note 3, at A73.

16. *Id.* at 16-17.

17. Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. Pa. L. Rev. 1, 3 (1994); see also Lani Guinier et al., *Becoming Gentlemen: Women, Law School, and Institutional Change 1-2* (Boston, 1997).

18. Allison L. Bowers, *Women at the University of Texas School of Law: A Call for Action*, 9 Tex. J. Women & L. 117, 139 (2000).

19. Wightman, *supra* note 13, at 12.

20. *Id.* at 27.

21. Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. Legal Educ. 311, 312-14 (1994).

study found evidence that women at Penn received lower grades at least in part because they were alienated by the faculty's style of teaching.<sup>22</sup>

The grade gap is undoubtedly more pronounced at some law schools than others. Until many schools are individually studied with the kind of statistical analysis found in the Penn and Texas studies, we can only guess about the kinds of schools where the pedagogical environment has a destructive effect on women. The larger grade differentials noted in the Penn and Texas studies and the lower law review participation at the producer schools<sup>23</sup> both hint that the pedagogical environment may be worse for women at the top-ranked schools than in legal education generally. No school has an excuse for failing to do a gender/grades study now. Registrars' records have become so computerized that at many schools the relevant data could be produced in short order.

## II. Law School Deans and Faculties

### A. Overview

A statistical picture of law school deans and faculties is much less promising than the composition of law school student bodies.

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**Table 7**  
**Female Percentages of Law School Faculty, According to Status,**  
**Averages for 1996–99 Academic Years<sup>a</sup>**

	<i>Female percentage</i>
Law school deans <sup>b</sup>	9%
Conventionally tenured and tenure-track faculty <sup>c</sup>	26
Faculty not on a conventional tenure track <sup>d</sup>	68

<sup>a</sup>Except for deans, the percentages in Table 7 were computed from the database that the first two statistical columns in the Appendix were drawn from. For the methodology through which that database was developed, see below, section II.D. The average for deans was computed from the data from which Table 8 is drawn.

<sup>b</sup>In 2000–01, 12.6 percent of law school deans are female. I have used the 1996–99 average in Table 7 for contemporaneous comparison with the other statistics in the same table.

Associate deans are not counted on this line.

<sup>c</sup>Deans and associate deans are included on this line to the extent they are conventionally tenured or tenure-tracked. (Some associate deans are not.) Surveys covering a high proportion but not all law schools showed the female percentage of conventionally tenured and tenure-track faculty to be 11 percent in 1980–81 and 16 percent in 1986–87. Chused, *infra* note 33, at 557.

<sup>d</sup>At some schools clinicians are eligible for clinical tenure. If clinical tenure or a clinical tenure track involves the same job security, pay scale, and voting rights as conventional tenure, the job is counted on the "tenured and tenure-track faculty" line of Table 7. If clinical tenure or tenure track is inferior to conventional tenure, the job is counted with "faculty not on a conventional tenure track."

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22. Guinier et al., *supra* note 17, at 21–26. See also Taunya Lovell Banks, Gender Bias in the Classroom, 38 J. Legal Educ. 137 (1988); Bowers, *supra* note 18, at 132–39; Marsha Garrison et al., Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania, 3 Mich. J. Gender & L. 515 (1996); Lani Guinier, Lessons and Challenges of Becoming Gentlemen, 24 N.Y.U. Rev. L. & Soc. Change 1 (1998); 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); 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); Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299 (1988).

23. I discuss law review participation later on. See Table 25.

Table 7 charts the distribution of women among law school deans, conventionally tenured and tenure-track faculty, and faculty whose jobs are not on the conventional tenure track. The conventional tenure track leads to the kind of tenure available to virtually all teachers of doctrinal subjects such as property and torts. Nearly all who are *off* the conventional tenure track teach skills in clinics, simulation courses, and legal writing programs. And the overwhelming majority of them will never, in their present jobs, become eligible for any form of tenure (although some qualify for clinical tenure, the inadequacies of which at most schools I explain later in this article). Faculty off the conventional tenure track are paid substantially less than conventionally tenure-tracked teachers are—often *less than half* of conventional tenure-track pay.<sup>24</sup> They may or may not vote in faculty meetings, and if they do vote, it might be only on some issues and not on others.

This is a startling picture and, as we shall see, it is replicated almost everywhere in legal education: the top jobs are overwhelmingly male, and the bottom ones are overwhelmingly female.

### B. Deans

Table 8 shows the female percentages of deans of all ranks from 1992–93 through 1999–2000. For both deans and professorial associate deans,<sup>25</sup> one sees plateaus separated by one-year spurts of progress. In 1993–94 the female percentage of law school deans increased from 7 to 9 percent, representing a gain of three deanships, from 12 to 15. The number remained 15 through 1996–97 and then dropped to 14. In 1994–95 the female percentage fell although the number of female deans did not; that was because the number of law schools increased. The 1996–97 drop in the number of deanships held by women is not reflected in the female percentage because of rounding to the nearest whole percent. Thus, from 1992–93 through 1997–98, the female percentage of law school deans was stuck at 8 percent, give or take one percentage point. In 1998–99 the number of deanships held by women jumped to 19, but the female percentage grew only to 10 percent, deflated by the addition of still more law schools. The 1999–2000 increase to 11 percent represents a gain of only one deanship, to 20. For 2000–01 (not shown in Table 8), the number of female deans has grown to 23,<sup>26</sup> less than 13 percent of the 183 deanships at ABA-approved schools.

Only rarely does a law school dean have an academic rank below full professor. Full professors are thus, for the most part, the population from which deans are drawn. In 1999–2000 women held 22 percent of full professorships.<sup>27</sup> If the female percentage of law school deans in 1999–2000 had

24. Jan M. Levine & Kathryn M. Stanchi, *Women, Writing, and Wages: Breaking the Last Taboo*, 7 Wm. & Mary J. Women & L. \_\_\_\_ (2001).

25. A professorial associate dean is a member of the professoriat serving as an administrator. At some schools certain associate deans are career administrators and not members of the professoriat. I refer to them here as nonprofessorial associate deans.

26. ABA Section of Legal Education and Admissions to the Bar, *Committee Directory* 70–91 (2000–2001).

27. See Table 9.

been equal to the female percentage of full professors, 40 law schools would have had female deans. That is exactly twice the number of schools that actually did have female deans at the time. If the present rate of gain were to continue—roughly 1.3 additional female deans per year over the past eight years—and if the number of ABA-accredited law schools were to remain constant, gender parity with the source population for deans would be reached in about the year 2014. But because the female percentage of full professors and the number of accredited law schools both continue to grow, the female percentage of law school deans might not equal the female percentage of people qualified by academic rank to hold a deanship at *any time* in the foreseeable future—unless there are dramatic changes in the way law school deans are hired.

**Table 8**  
**Female Percentages of Deans, According to Rank, 1992–2000<sup>a</sup>**

	1992 –93	1993 –94	1994 –95	1995 –96	1996 –97	1997 –98	1998 –99	1999 –2000 <sup>b</sup>
Law school deans	7%	9%	8%	8%	8%	8%	10%	11% (20 of 183)
Associate deans with professorial titles	22	24	24	25	28	28	27	30 (76 of 256)
Associate deans without professorial titles	46	48	52	50	48	52	53	53 (82 of 156)
Assistant deans <sup>c</sup>	70	69	70	72	70	70	69	69 (250 of 360)

<sup>a</sup>AALS Statistical Report, *supra* note 29, Tables 1A and 2A (1997–98 and 1999–2000 editions).

<sup>b</sup>In this column the numbers in parentheses under the percentages represent the number of women and the total number of jobs in 1999–2000.

<sup>c</sup>An insignificant number of assistant deans (10 or fewer per year) had a professorial title. They are not represented in the table.

For professorial associate deans, a plateau of 24 percent (1993–96) was followed by another plateau of 28 percent, give or take a percentage point (1996–99). The population from which associate deans can be drawn does extend beyond the ranks of full professors into the associate professors, particularly the more senior associate professors. AALS statistics do not separate associate professors according to seniority, but a comparison of the female percentages of full and associate professors<sup>28</sup> suggests that the female percentage of professorial associate deans (currently 30 percent) might be roughly equal to the female percentage of the professors who by rank are qualified to become associate deans.

The female percentage of *non*professorial associate deans fluctuates within a narrow range around 50 percent. A number of nonprofessorial associate deans hold jobs that at other law schools might be titled assistant deanships. What is noteworthy here is that the female percentage of these superassistant deans is substantially less than the female percentage of assistant deans.

28. See Table 9.

Assistant deans are almost continuously 70 percent female. Like elementary school teaching, the job has become gender-stereotyped as female, and the stability of the statistics suggests that it will remain that way indefinitely.

### C. Overview of Faculty Rank and Status

Table 9 shows the female percentage of full-time teachers according to rank. The table is drawn from AALS statistics, which have some imperfections. First, they exclude deans of all types as well as law library directors. A full professor who is also an associate dean, for example, is not counted in Table 9. Second, people are counted according to their *approximate* job titles regardless of whether they are on or off the tenure track. An associate clinical professor who is not on any kind of tenure track is counted in the AALS statistics (and therefore in Table 9) as an associate professor. But conventionally tenured or tenure-track full, associate, and assistant professors vastly outnumber clinicians and legal writing teachers with similar-sounding job titles who are not conventionally tenured or on a conventional tenure track. So Table 9 should provide at least a general—although not entirely precise—sense of the extent to which women are gaining access to the higher academic ranks in law schools.

**Table 9**  
**Female Percentages of Full-Time Teachers, According to Rank, 1992–2000<sup>a</sup>**

	1992 –93	1993 –94	1994 –95	1995 –96	1996 –97	1997 –98	1998 –99	1999 –2000 <sup>b</sup>
Full professors	15%	16%	17%	18%	19%	20%	21%	22% (979 of 4,467)
Associate professors	40	40	40	42	44	44	45	46 (528 of 1,147)
Assistant professors	47	51	52	53	51	51	52	48 (281 of 585)
Lecturers and instructors	65	67	67	71	68	67	68	68 (346 of 509)

<sup>a</sup>AALS Statistical Report, *supra* note 29, Tables 1A and 2A (1997–98 and 1999–2000 editions).

<sup>b</sup>In this column the numbers in parentheses under the percentages represent the number of women and the total number of jobs in 1999–2000.

Among full professors, women's progress is steady—about one percentage point per year—but the percentages are still so low 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.

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. As the raw numbers in Table 9 show, assistant professors together are only 9 percent of the teaching professoriat and even less than that when professorial deans and law library directors are added to the numbers in the table. Nearly three-quarters of the teaching professoriat are now full professors. There simply are not enough women at the assistant

professor level to have a substantial effect in the future on the associate and full professor percentages. Second, as Tables 17 and 18 show, 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. In fact, the high female percentage of assistant professors in Table 9 implies what Table 22 actually shows: that men are being disproportionately hired as associate professors and women as assistant professors.

The 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.

The pattern illustrated in Tables 8 and 9 among deans and teaching faculty is repeated in law libraries. In the 1999–2000 academic year, 52 percent of law school library directors were women (up from 44 percent in 1994–95).<sup>29</sup> In 1999, 67 percent of all academic law librarians were women.<sup>30</sup> If directors were subtracted from that figure, the female percentage of nondirector librarians would be substantially higher than 67 percent. Historical statistics on law library directors are instructive in another way. In 1950, 55 percent of the directors were women, but at that time only 66 percent of the directors had law degrees; in 1970, when 91 percent of library directors had law degrees, women had only 35 percent of the directorships.<sup>31</sup> As these jobs were upgraded, women were driven out of them. Only now is the female percentage of library directors approaching the level where it had been in 1950.

When one looks at the legal writing field, the same pattern appears there as well. In fall 1998, 70 percent of legal writing teachers were women.<sup>32</sup> Richard H. Chused's SALT surveys counted only 102 "contract status legal writing faculty" in 1980–81, averaging less than one per law school, and 48 percent of them were women. In 1986–87 Chused found 218 contract legal writing teachers, 68 percent of whom were women.<sup>33</sup> In other words, as soon as the field became large enough to be considered an underclass, it was stereotyped as female—a situation that continues to this day.

The ABA Commission on Women in the Profession has included legal writing in the category of a "pink ghetto."<sup>34</sup> Chused saw some evidence of "tracking" women qualified for a regular teaching job into legal writing positions . . . , pay[ing] them less than they are worth, and then let[ting] them

29. Association of American Law Schools, *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions*, Table 2A (1998–99 edition) and 1A (1999–2000 edition) [hereinafter *AALS Statistical Report* with edition in parentheses].

30. Association of American Law Librarians, *Biennial Salary Survey* at vii (1999).

31. Donna Fossum, *Women Law Professors*, 1980 *Am. Bar Found. Res. J.* 903, 903–04.

32. See Table 12.

33. *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 *U. Pa. L. Rev.* 537, 557 (1988).

34. ABA Comm. on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education* 32–33 (Chicago, 1996).

go."<sup>35</sup> Since then others have come to similar conclusions, noting, for example, that "it is not clear whether women are steered into Legal Research and Writing because it is low status, or it is low status because it is done by women."<sup>36</sup> Chused also noted "a correspondence . . . between schools with a large proportion of women in legal writing positions and those with a small proportion of women on their regular faculties."<sup>37</sup> As the Appendix and Table 15 show, that is still true today.

Clinical and legal writing teaching are the only fields in which significant numbers of teachers are hired outside of the conventional tenure track. For clinicians who are not on that track, Standard 405(c) of the ABA Standards for Approval of Law Schools requires law schools to "afford to full-time clinical faculty members a form of security of position and noncompensatory perquisites reasonably similar to those provided other full-time faculty members." There are two narrowly defined exceptions. Standard 405(c) "does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration."<sup>38</sup>

Although from a clinician's point of view Standard 405(c) treatment is better than no protection at all, it is less secure and inferior in other ways to the conventional tenure system. The standard does not require that clinical job security be equal. The security-of-position requirement can be satisfied through a separate system of clinical tenure or a system of renewable long-term contracts. A person with clinical tenure can be dismissed on the ground of "termination or material modification of the clinical program."<sup>39</sup> The corresponding provisions governing conventional tenure<sup>40</sup> permit dismissal of a tenured doctrinal teacher only when the law school is being abolished or is subject to a financial emergency that threatens the existence of the school, and not merely because the teacher's primary subject will no longer be taught or will be taught in a different way. If a school stops teaching oil and gas law, a tenured teacher of that subject will still have a job and will teach something

35. Chused, *supra* note 33, at 553-54. Chused did not examine the applicant pools for various law school teaching jobs or the career goals and motivations of applicants for legal writing jobs. *Id.* at 554.

36. Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 *Yale J.L. & Feminism* 333, 353-54 (1996). See also Maureen J. Arrigo, *Hierarchy Maintained: Status and Gender Issues in Legal Writing Programs*, 70 *Temple L. Rev.* 117 (1997); Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 *Cardozo Women's L.J.* 75 (1997).

37. Chused, *supra* note 33, at 554.

38. ABA, *Standards for Approval of Law Schools*, Standard 405(c) (Indianapolis, 1999) [hereinafter ABA Accreditation Standards].

39. *Id.*, Interpretation 405-6.

40. The terms of conventional tenure are not regulated by the ABA Standards. Both forms of tenure are regulated by a university's or a law school's own internal statutes and the principles of academic contract law, but the ABA Standards permit a lesser form of job security with clinical tenure, and law schools with clinical tenure systems have generally adopted the permitted formula.

else instead. But if a school closes its clinics, it typically has the power to dismiss any teachers there who are clinically tenured, even if the school substitutes a simulation skills program that those clinicians are fully qualified to teach. And unless the school's own internal statutes provide otherwise, a clinician with a long-term contract instead of clinical tenure can lose the job merely through nonrenewal of the contract.

A 405(c) clinical job can be less valuable in other ways as well, such as lower pay and more limited voting rights in faculty meetings. In fact, it is rare for a teacher not on the conventional tenure track to earn as much as an equally experienced teacher who is on it. Even clinically tenured teachers typically have a limited franchise; they often cannot vote on personnel decisions outside the clinic, and they may not be eligible for service on certain faculty committees.

Table 10 shows how many clinicians and legal writing faculty are conventionally tenured or tenure-tracked, receive 405(c) treatment, or have none of these protections. The number of clinicians who are neither on a conventional tenure track nor 405(c)-protected appears to be larger than the plain wording of the standard and its official interpretations would contemplate. But a surprising number of schools provide 405(c) treatment to legal writing faculty even though not required through accreditation to do so. (At the time this study was completed, in autumn 2000, Standard 405(d) required only that schools offer terms of employment "sufficient to attract well qualified" applicants for employment.<sup>41</sup>)

Table 10 also shows that it is a myth that full-time legal writing teachers outnumber clinicians. In fact the opposite is true, by a very substantial margin.

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**Table 10**  
**Status of Clinical and Legal Writing Faculty Without Regard to Gender,**  
**Fall 1998<sup>a</sup>**

	<i>Conventionally tenured or tenure-track</i>	<i>Covered by ABA Standard 405(c)</i>	<i>Not tenured, tenure-track, or 405(c)</i>	<i>Total</i>
Clinical faculty	46% (358) <sup>b</sup>	32% (253)	22% (171)	100% (782)
Legal writing faculty	13% (66)	20% (101)	67% (341)	100% (508)

<sup>a</sup>Computed from Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. Legal Educ. 1, 4-5 (2000). The data in Table 10 was reported by law schools in responses to the fall 1998 ABA annual questionnaire.

<sup>b</sup>Numbers in parentheses are raw numbers.

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Tables 11 and 12 show the distribution of women among these three forms of status in the clinical and legal writing fields. In both fields the percentage of women on the conventional tenure track is substantially lower than the percentages in other statuses.

41. ABA Accreditation Standards, *supra* note 38, Standard 405(d).

**Table 11**  
**Status of Male and Female Clinicians, Fall 1998<sup>a</sup>**

	<i>Conventionally tenured or tenure-track</i>	<i>Covered by ABA Standard 405(c)</i>	<i>Not tenured, tenure-track, or 405(c)</i>
Women	41% (146) <sup>b</sup>	57% (144)	61% (104)
Men	59% (212)	43% (109)	39% (67)
Total	100% (358)	100% (253)	100% (171)

<sup>a</sup>Computed from Angel, see Table 10 note a, at 4–5. The data in Table 11 was reported by law schools in responses to the fall 1998 ABA annual questionnaire.

<sup>b</sup>Numbers in parentheses are raw numbers.

**Table 12**  
**Status of Male and Female Legal Writing Faculty, Fall 1998<sup>a</sup>**

	<i>Conventionally tenured or tenure-track</i>	<i>Covered by ABA Standard 405(c)</i>	<i>Not tenured, tenure-track, or 405(c)</i>
Women	58% (38) <sup>b</sup>	75% (76)	70% (240)
Men	42% (28)	25% (25)	30% (101)
Total	100% (66)	100% (101)	100% (341)

<sup>a</sup>Computed from Angel, see Table 10 note a, at 4–5. The data in Table 12 was reported by law schools in responses to the fall 1998 ABA annual questionnaire.

<sup>b</sup>Numbers in parentheses are raw numbers.

#### *D. Methodology for Faculty Status Statistics for Individual Schools*

The Appendix sets out four individual statistics for each ABA-approved law school. For each statistic, the three academic years between and including 1996–97 and 1998–99 are averaged together to produce a single number so that short-term fluctuations are evened out.

Column 1 in the Appendix reports the female percentage of the school's conventionally tenure-tracked and tenured faculty from 1996–97 through 1998–99. (For the Appendix as a whole, schools are listed in descending order of the column 1 percentage. Where the rounded percentages are equal, schools are listed in alphabetical order.) Column 2 shows the female percentage of faculty who were neither on a conventional tenure track nor conventionally tenured during the same years. In both columns the number in parentheses is a three-year average of the number of teachers reported in that column. (Compiling the statistics reported in columns 1 and 2 required a census of every full-time law school faculty job in the country for the three years from 1996–97 to 1998–99. In a moment, I will explain the methodology of that census.) Column 3 lists the average female percentage of full-time faculty as it appears in published ABA statistics for the same three years. The relationship between those figures and the ones in columns 1 and 2 will also be explained in a moment. To add some context, column 4 lists the average female percentage of the school's student body for the same three years.<sup>42</sup>

42. For example, North Carolina Central, the third school listed in the Appendix, employed over the three years studied an average of 18 teachers with conventional tenure or on a conventional tenure track, of whom a yearly average of 51 percent were female (column 1). Over the

Column 3 lists the female percentage of tenured, tenure-track, and Standard 405(c)-protected faculty, as reported in ABA statistics. If used as a measure of unbiased hiring, these figures have two problems. First, they omit law school deans, associate deans, and library directors (except for the rare dean or director who teaches more than fifty percent of the time). They also omit faculty on leave for the fall semester of the year the school submitted the ABA questionnaire. Second, Standard 405(c)-protected faculty are mingled with faculty who are conventionally tenured or tenure-tracked, even though 405(c) faculty typically have inferior job security, governance rights, compensation, or a combination of these. Statistics developed from AALS directories avoid both of these difficulties.<sup>43</sup>

The ABA's formula makes perfect sense for the purpose for which it 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. Significant numbers of people conventionally tenured or on the conventional tenure track—many of them in leadership positions—are excluded from the column 3 figures. At the same time, significant numbers of people not on the conventional tenure track are included.

I tabulated the figures in columns 1 and 2 separately to overcome these problems, using the following methodology and working from the job titles and biographical entries published in the AALS directories for 1996–97, 1997–98, and 1998–99.

1. Professors, associate professors, and assistant professors were assumed to be conventionally tenured or on a conventional tenure track, except for the handful of schools that have a practice of assigning those titles to skills teachers who are not on a conventional tenure track.<sup>44</sup>
2. Instructors, lecturers, and people with titles qualified by "clinical," "legal writing," or some equivalent—such as "clinical associate professor" or "legal writing professor"—were assumed not to be conventionally tenured or on a conventional tenure track.

same period, the school employed an average of three teachers who were not conventionally tenured or on tenure track, of whom a yearly average of 71 percent were female (column 2). ABA statistics show that for those years an average of 54 percent of "full-time" teachers were female (column 3) and an average of 56 percent of the student body was female (column 4).

43. AALS directories are routinely sources for raw data in population studies of law school faculties, and those studies routinely rely on the job titles appearing in the directories. See Borthwick & Schatt, *supra* note 9; Fossum, *supra* note 10; Fossum, *supra* note 31; Deborah J. Merritt & Barbara F. Reskin, The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women, 65 S. Cal. L. Rev. 2299 (1992); Deborah Jones Merritt & Barbara F. Reskin, Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring, 97 Colum. L. Rev. 199, 209 (1997) [hereinafter Sex, Race, and Credentials]; Deborah J. Merritt et al., Family, Place, and Career: The Gender Paradox in Law School Hiring, 1993 Wis. L. Rev. 395, 399; Elyce H. Zenoff & Kathryn V. Lorio, What We Know, What We Think We Know, and What We Don't Know About Women Law Professors, 25 Ariz. L. Rev. 869 (1983).

44. For the few schools with such a practice, I have gathered the distinguishing data in part from people at the school.

3. The following were statistically ignored (not counted in either category):

- adjuncts
- emeriti/emeritae<sup>45</sup>
- visitors, except to the extent a school uses visitorships as a method of regularly staffing off-tenure-track skills-teaching positions
- faculty members serving primarily or prominently outside the law school, such as university presidents, provosts, vice presidents, and vice provosts
- fellows, with two exceptions: (1) where the terms of employment and responsibilities are not significantly different from those given to instructors and lecturers elsewhere and (2) where the fellowship is merely an honorific attached to a professorial position on tenure track
- 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, with two exceptions: (1) where the word "professor" appears in the job title (which includes every law school dean and most associate deans) and (2) 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
- people for whom the AALS Directory does not indicate gender, with two exceptions: (1) where the given name alone unambiguously indicates gender and (2) where gender was identified through 5 or 7 below

4. The following were counted:

- people on leave (counted at their home institution, but not one at which they might have been visiting)
- 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

5. Because job titles in the clinical and legal writing fields sometimes do not accurately reflect status or work assignments, I cross-checked entries in the AALS directories against another database maintained jointly by the Clinical Legal Education Association and the AALS Section on Clinical Legal Education as well as a separate database developed by Jan M. Levine<sup>46</sup> covering legal writing programs. (Anomalies were clarified in part from people at the school.)

45. I made exceptions in two instances where an emeritus or emerita had been recalled to service as an associate dean for academic affairs.

46. *Legal Research and Writing: What the Schools Are Doing, and Who Is Doing the Teaching*, 7 *Scribes J. Legal Writing* 51 (2000).

6. If a separate clinical tenure track involves limited job security or governance rights or is associated with inferior pay, I did not treat it as the equivalent of a conventional tenure track. If the only significant difference between the tenure track for clinicians and the tenure track for doctrinal teachers is in the test for granting tenure, I treated both as conventional tenure tracks.
7. I then sent a letter to the dean or academic associate dean of each law school, providing the school's statistics from the Appendix and inviting the correction of any errors.<sup>47</sup> Wherever a dean responded that the statistics were inaccurate for the years involved in the study and offered replacement statistics that were consistent with the methodology outlined above, I used the dean's statistics instead.<sup>48</sup>

Because all the statistics in the Appendix are three-year averages, and because I gave deans ample opportunities to correct errors, serious inaccuracies seem unlikely.

Minute differences between schools should not be considered significant. A school where 31 percent of the conventionally tenure-tracked faculty are listed here as female is not for that reason alone a more diverse place than one where 29 percent are listed as female. They are roughly equal. It is more important to look at wider differences in percentages. And it is most important to look at patterns that cover groups of schools.

Differences between a school's column 1 and column 3 percentages seem usually explainable by differences in what the two statistics cover. The following people are included in column 1 but excluded from column 3: deans, associate deans, and library directors who are conventionally tenured or tenure-tracked as well as conventionally tenured or tenure-track faculty who were on leave in the fall semester when the school filled out its ABA questionnaire. On the other hand, clinicians and legal writing faculty who receive Standard 405(c) treatment are included in column 3 but not in column 1. They appear in column 2 instead of column 1 because their status is inferior to that of teachers on the conventional tenure track.

#### *E. Patterns in Faculty Status Statistics*

The Appendix shows that in fact a single pattern permeates legal education. With one exception, wherever a law school has more than two faculty jobs outside the conventional tenure track, the female percentage of the faculty filling those jobs is substantially higher than the female percentage of conventionally tenured and tenure-track faculty. And the exception is not really an exception. At the only school where the female percentage of off-

47. To insure delivery, I sent each letter twice, either by postal mail and e-mail or by postal mail and fax. I told deans that if they considered the figures accurate, they need not respond.

48. In a few instances, a dean offered replacement statistics that covered years not part of this study, that were computed in a way inconsistent with the methodology outlined in the text, or that differed from the data in the AALS directories in ways the dean could not explain. In those instances I did not use the dean's statistics.

tenure-track faculty falls below the percentage of conventionally tenure-tracked faculty, the off-tenure-track jobs are being converted to conventionally tenure-tracked jobs.

The only variation is in the degree of difference between the two numbers. Nineteen schools employed no faculty off the conventional tenure track, and 31 employed two or fewer. One school is the exception noted above, and the statistics for another are incomplete because the school refuses to publish the names of its off-tenure-track faculty. *At 97 of the 130 remaining schools*, the difference between the female percentage of conventionally tenured and tenure-track faculty and the female percentage of other faculty was *30 percentage points or more*. At only four was the difference less than 10 percentage points. Moreover, when the 31 schools with only one or two faculty off the conventional tenure track are combined into a single statistic, it almost exactly matches the national average.<sup>49</sup>

In a statistical sense, the uniformity throughout legal education is remarkable. Virtually the only schools at which it cannot be observed are the ones with no faculty at all off the conventional tenure track.

The new or temporary nature of many off-tenure-track jobs, creating more openings to be filled through contemporary hiring practices, cannot account for the pattern described above. Table 22 in fact shows that contemporary hiring practices cannot be considered gender-blind. High percentages of women are being hired into entry-level jobs titled "lecturer" or "instructor." Much lower percentages of women are being hired into entry-level jobs with the word "professor" in their titles. And the bulk of the entry-level associate professor hires—the premium entry-level jobs—are going to men.

**Table 13**  
**1996–99 Average Female Percentage of Faculty, by Status and Region<sup>a</sup>**

	<i>Conventionally tenured or tenure-track</i>	<i>Not on conventional tenure track</i>
Puerto Rico (3 schools)	33% <sup>b</sup>	— <sup>b</sup>
Northeast except Boston–Washington corridor (15 schools)	30	62%
California (19 schools)	29	68
Boston–Washington corridor (35 schools)	27	71
West except California (18 schools)	27 <sup>c</sup>	66
Midwest (43 schools)	26	65
South (49 schools)	24	69

<sup>a</sup>For definitions of regions, see the notes to Table 3. The Boston–Washington corridor includes all CMSAs and MSAs between and including those two cities. See Table 2 note b.

<sup>b</sup>Since no Puerto Rican law school has more than two faculty members off the conventional tenure track, any percentage that might appear for Puerto Rican schools under this heading would be statistically insignificant. See Appendix, note b.

<sup>c</sup>The West is listed after the Boston–Washington corridor because its unrounded percentage is lower.

49. See Appendix, note b.

**Table 14**  
**1996–99 Average Female Percentages of Faculty in Law Schools Located**  
**in the Four Largest CMSAs<sup>a</sup>**

	<i>Conventionally tenured or tenure-track</i> 26.3%	<i>Not on conventional tenure track<sup>b</sup></i> 67.9%
<b>Averages for all U.S. schools<sup>c</sup></b>		
<i>New York</i>		
CUNY	60	88
Brooklyn	36	86
Seton Hall	33	69
Pace	32	none
Quinnipiac	31	74
New York Law School	29	55
NYU	27	74
St. John's	27	44
Touro	25	86
Fordham	24	85
Rutgers—Newark	22	72
Yeshiva	21	71
Yale	20	43
Hofstra	18	71
Columbia	16	60
<i>Los Angeles</i>		
Western State <sup>d</sup>	41	none
Loyola L.A.	36	69
Chapman <sup>d</sup>	35	none
Whittier	28	100
Southwestern	27	43
UCLA	27	71
Southern California	23	71
Pepperdine	16	50
<i>Chicago</i>		
DePaul	33	82
Chicago-Kent	32	47
John Marshall	31	*
Chicago	22	31
Loyola Chicago	22	62
Northwestern	18	55
<i>Washington-Baltimore</i>		
District of Columbia	36	100
Baltimore	35	none
Catholic	31	53
Maryland	31	71
American	29	69
Georgetown	28	49
Howard	25	77
George Washington	20	68
George Mason	16	*

<sup>a</sup>Individual school statistics are from columns 1 and 2 in the Appendix. Population based on 1996 population estimates (the most recent available) from the U.S. Department of Commerce, published in Statistical Abstract, see Table 2 note a, at 40–44. For more complete definitions of the CMSAs, see Table 2 note b.

<sup>b</sup>An asterisk in this column indicates that the school employed an average of two or fewer persons off the conventional tenure track during the period studied. With a sample per school that small, a school's gender percentage is not particularly meaningful. Chance might explain, for example, why a school has hired two women (or two men) for two such jobs.

<sup>c</sup>For the reason why numbers in this line are carried out to one decimal point and others in this table are not, see Appendix, note e.

<sup>d</sup>Based on one year's figures (1998). Previously the school was unaccredited.

I collated the data in the first two statistical columns of the Appendix geographically, by law school affiliation (public, private/nonsectarian, or religious), and by date of accreditation. The results are set out below.

A school's affiliation does not correlate with its profile in the Appendix. At public and religious schools, the female percentage of conventionally tenured and tenure-track faculty is the same: 26 percent. At private, nonsectarian schools, it is 27 percent. The female percentage of other faculty is 63 percent at religious schools, 66 percent at private, nonsectarian schools, and 72 percent at public schools.

The pattern is also uniform across the various kinds of localities where a law school might be situated. (See Table 2.) For all types of metropolitan areas, the female percentage of conventionally tenured and tenure-track faculty ranges only between 26 and 27 percent. For small-city and rural schools, it is 24 percent. The female percentage of other faculty ranges from 62 percent in CMSAs and MSAs with populations between 1,900,000 and 4,999,999 to 74 percent in MSAs with populations from 850,000 to 1,899,999, with the other types of localities scattered randomly within that narrow range.

Slight correlation can be seen when law schools are grouped by region. Except for the three Puerto Rican schools, regional statistics represent only minor variations from the basic pattern. In fact, assumptions about regional politics and culture are not at all reflected in Table 13.

Variations among nearby schools are much greater than variations among geographically organized groups of schools. Table 14 sets out the faculty statistics for schools in the four largest consolidated metropolitan areas.

Table 15 groups schools according to the number of faculty they employed off the conventional tenure track during the period studied. Here we can see a more direct correlation. Schools with no faculty off the conventional tenure track had the highest female percentage of conventionally tenured and tenure-track faculty. The more faculty hired off the conventional tenure track, the greater the decline in the female percentage of conventionally tenured and tenure-track faculty. The pattern in Table 15 thus suggests that wherever there are jobs off the conventional tenure track, women will be hired into them, and if there are no such jobs, more women will be hired into the conventional tenure track.

Table 15

1996-99 Average Female Percentage of Faculty, by a School's Number of Faculty Not Conventionally Tenured or on Tenure Track

<i>Average number of faculty per school who were not conventionally tenured or on tenure track<sup>a</sup></i>	<i>Average female percentage of conventionally tenured or tenure-track faculty</i>	<i>Average female percentage of faculty not on a conventional tenure track</i>
zero (19 schools)	30%	—
1-2 (31 schools)	27	67%
3-6 (69 schools)	26	73
7-12 (50 schools)	25	64
13 or more (12 schools)	24	62

<sup>a</sup>The number of schools (in parentheses) adds up only to 181 because one school refuses to publish the names of its off-tenure-track faculty.

Table 16 groups schools according to their date of accreditation. The twelve schools accredited between 1983 and 1998 have a relatively high average female percentage of conventionally tenured and tenure-track faculty, perhaps because their faculties were built during a period when hiring was less discriminatory than earlier. The schools accredited from 1968 to 1980—the most intense period of law school accreditation since the 1920s—are no better than earlier-accredited schools in the average female percentage of conventionally tenured and tenure-track faculty. And, for reasons that are unclear, both the 1968–80 and the 1983–98 schools have higher average female percentages of faculty outside the conventional tenure track.

**Table 16**  
**1996–99 Average Female Percentage of Faculty,**  
**by a School's Date of Accreditation<sup>a</sup>**

	<i>Average female percentage of conventionally tenured or tenure-track faculty</i>	<i>Average female percentage of faculty not on conventional tenure track</i>
1983–98 (12 schools <sup>b</sup> )	34%	76%
1968–80 (34 schools <sup>c</sup> )	26	75
1923–67 (136 schools <sup>d</sup> )	26 <sup>e</sup>	66

<sup>a</sup>Two schools were reaccredited in the 1990s because they changed university affiliations. For those schools—Quinnipiac (originally Bridgeport) and Seattle (originally Puget Sound)—I have used the date of the original accreditation.

<sup>b</sup>Chapman, CUNY, District of Columbia, Georgia State, Regent, Roger Williams, St. Thomas, Texas Wesleyan, Thomas Jefferson, Touro, Western State, and Widener—Harrisburg.

<sup>c</sup>Arizona State, Arkansas—Little Rock, Baltimore, Brigham Young, California—Davis, Campbell, Dayton, Florida State, Franklin Pierce, George Mason, Hamline, Hawaii, Hofstra, Inter American, Lewis and Clark, McGeorge, Mississippi College, New England, Northeastern, Northern Illinois, Nova, Pace, Pepperdine, Quinnipiac, Seattle, Southern Illinois, Southwestern, Texas Tech, Thomas Cooley, Vermont, Western New England, Whittier, Widener—Wilmington, and Yeshiva.

<sup>d</sup>If a school is not listed in note b or c, it was accredited in the 1923–1967 period.

<sup>e</sup>The 1923–67 schools are listed after the 1968–80 schools because their unrounded percentage is lower.

#### *F. Tenure Decisions*

Women on tenure track gain tenure at lower rates than men. Using AALS data collated by Richard A. White, Table 17 covers the tenure-track cohort hired in 1990 and 1991, which would have been considered for tenure by the 1997–98 academic year or earlier.<sup>50</sup> Table 18 reports the results of an earlier AALS study, not cohort based, which computed tenure decisions reached between 1979 and 1989.

Assuming that the cohort study reported in Table 17 is representative of tenuring results in the 1990s generally, the gap between women and men in this respect may have grown. The difference in denial rates reported in the earlier study (Table 18) was not statistically significant, although the resignation rates and tenured rates were.<sup>51</sup> In the later study (Table 17), the resigna-

50. The longest customary tenure consideration schedule is seven years. Some schools follow a shorter schedule, such as five years.

51. Report of the Special Committee on Tenure and the Tenuring Process for the Association of American Law Schools, in *Association of American Law Schools, 1993 Proceedings* 359, 363, 457–58 (Washington, 1993).

tion rates were not separately computed, but the tenuring gap between women and men grew from 6 percentage points to 11 percentage points.

Table 17

**Tenure Rates for Men and Women Hired on Tenure Track in 1990 and 1991, Through the 1997–98 Academic Year<sup>a</sup>**

	<i>Tenured</i>	<i>Not tenured or no longer at an AALS school</i>	<i>Totals</i>
Women (199) <sup>b</sup>	61%	39%	100%
Men (239)	72	28	100

<sup>a</sup>Richard A. White, Preliminary Report: The Promotion, Retention, and Tenuring of New Law School Faculty Hired in 1990 and 1991 (unpublished manuscript). White, the AALS statistician, collated this data from the questionnaires law faculty fill out every spring for AALS directories.

<sup>b</sup>Numbers in parentheses are raw numbers.

Table 18

**Tenure Rates for Men and Women in Tenure Decisions  
Made from 1979 to 1989<sup>a</sup>**

	<i>Tenured</i>	<i>Denied<sup>c</sup></i>	<i>Resigned before decision</i>	<i>Totals</i>
Women (423) <sup>b</sup>	65%	14%	21%	100%
Men (1184)	71	12	16	100

<sup>a</sup>Report of the Special Committee on Tenure and the Tenuring Process for the AALS, *supra* note 51, at 457.

<sup>b</sup>Numbers in parentheses are raw numbers.

<sup>c</sup>Rounding exaggerates the gap between the numbers in each column. Unrounded, it is 1.1%.

### G. Faculty Pay

No gender-specific statistics about general law faculty pay have been published. The survey published annually by the Society of American Law Teachers does not separate salaries according to gender, and it lacks the reliability of statistics that can be verified through accreditation and membership inspections such as those conducted jointly by the ABA and the AALS. But neither the ABA nor the AALS publishes salary statistics. Neither organization currently collects the data, and the ABA is prevented by a consent decree from doing so.<sup>52</sup>

52. *United States v. American Bar Ass'n*, 934 F. Supp. 435, 436 (D.D.C. 1996). It is particularly regrettable that the consent decree—which the ABA signed against the advice of the officers of its Section of Legal Education and Admissions to the Bar—prohibits the collecting of salary information. The data reported in the text show that in certain parts of legal education women are being underpaid when compared to men with similar qualifications, and there is no evidence that those parts of legal education are exceptional in regard to gender pay differentials. But without the data that the ABA had routinely collected before the consent decree, that is all we can know statistically. As the accrediting authority for law schools, the section had been the only entity in a position to verify the accuracy of salary information and collate it with other data that would permit the kind of regression analysis needed to determine whether, as well as the precise extent to which, women have been underpaid in law schools.

The consent decree does, however, permit “the ABA, upon receipt of a complaint concerning discrimination, [to] collect[] and consider[] compensation information . . . relevant to

The only published gender-specific statistics on law faculty pay cover clinicians, legal writing faculty, and librarians. Tables 19 and 20 summarize research by Robert F. Seibel, who surveyed clinicians, correlated salary with gender, and controlled for job status and experience. He compared female clinicians with male clinicians but compared neither to doctrinal teachers. (Because as a group clinicians earn less than doctrinal teachers, comparison with doctrinal teachers would have introduced a separate salary differentiation and thus confused the question of whether women are being paid less than men for the same work.) Table 19 reports clinical salary differentials within employment status, and Table 20 reports them within ranges of experience. In every employment status and in every experience range, women were paid less than men.<sup>53</sup>

**Table 19**  
**1991-92 and 1993-94 Clinical Salaries, Compared by Gender and Status<sup>a</sup>**

	<i>1991-92 percentage by which men were paid more</i>	<i>1993-94 percentage by which men were paid more</i>
Tenured	1% (54)	9% (121)
On tenure track	3% (54)	11% (69)
Long-term contract	29% (48)	15% (95)
Short-term contract	25% (73)	5% (119)

<sup>a</sup>Seibel, *supra* note 53, at 544, 547. Where a respondent had clinical tenure or was clinically tenure-tracked, Seibel's methodology left it to the respondent to judge whether that status more closely resembled conventional tenure or long-term contracts. *Id.* at 544 n.7. Raw numbers of all respondents are in parentheses.

**Table 20**  
**1991-92 and 1993-94 Clinical Salaries, Compared by Gender and Experience<sup>a</sup>**

<i>Years since graduation</i>	<i>1991-92 percentage by which men were paid more</i>	<i>1993-94 by which men were paid more</i>
1-5	9% (14)	* (17)
6-10	12% (56)	1% (65)
11-15	13% (70)	9% (93)
16-20	2% (55)	8% (123)
21-25	* (25)	2% (73)
More than 25	* (7)	19% (35)

<sup>a</sup>Seibel, *supra* note 53, at 544, 547. An asterisk indicates that the number of responses from one gender or the other was less than five, rendering a statistic less reliable. See *id.* at 544 n. 9. Raw numbers of all respondents are in parentheses.

In the legal writing field, data showing similar disparities has been collected through surveys conducted by Jo Anne Durako with the Association of Legal Writing Directors and the Legal Writing Institute. After regression analysis eliminated several factors other than gender, the typical male legal writing

the allegations of discrimination" to evaluate compliance with ABA Standards 211-13 and their interpretations, although the information collected may not extend beyond the school being complained against. *Id.*

53. Do Deans Discriminate? An Examination of Lower Salaries Paid to Women Clinical Teachers, 6 UCLA Women's L.J. 531 (1996).

director was paid significantly more than the typical female director and was treated better than female directors in other ways.<sup>54</sup>

And a survey by Katherine E. Malmquist showed the same thing among librarians.<sup>55</sup> In fact, Malmquist's survey showed that male law library directors were paid more than female directors even though the female directors had, on average, more experience and nearly comparable academic degrees.<sup>56</sup>

In higher education generally, the American Association of University Professors reports that men are paid more than women of equivalent rank in all categories of colleges and universities. Overall, the gap has not shrunk in recent years; it is largest in research universities and smallest in four-year colleges. In research universities it has narrowed slightly since 1984–85, although it is still larger there than in other types of institutions.<sup>57</sup> During the same period it has actually *grown* in what the AAUP calls "comprehensive institutions," which are universities that do not offer enough doctoral and postdoctoral education to be considered research universities.<sup>58</sup> At least 100 of the 182 ABA-approved law schools are at research universities; most of the remainder are at comprehensive institutions.<sup>59</sup> The AAUP pointedly observes that "[t]he persistence of gender-related salary inequities among faculty is especially troubling at a time when the gap between men and women in the economy at large is narrowing, particularly among the highly educated."<sup>60</sup>

#### H. Inside the ABA and the AALS

Both the AALS and the ABA Section of Legal Education and Admissions to the Bar appear to be somewhat more gender-inclusive than legal education as a whole. Table 21 reports the important statistics for both organizations. All the listed components of the ABA include judges and practitioners to varying degrees, and the Council of the ABA Section of Legal Education and Admissions to the Bar also includes some nonlawyers. But otherwise most people appointed or elected to these entities are law school deans (of whom less than 13 percent are women in 2000–01<sup>61</sup>) and full professors (of whom 22 percent were women in 1999–2000<sup>62</sup>), and the ABA entities appear to be more gender-diverse than the law school populations from which they are drawn. The AALS

54. Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing, 51 J. Legal Educ. \_\_\_\_ (2001).

55. Academic Law Librarians Today: Survey of Salary and Position Information, 85 Law Lib. J. 135, 145–46, 158–60 (1993). See also Christopher J. Hoeppner, Trends in Compensation of Academic Law Librarians, 1971–91, 85 Law Lib. J. 185, 196–98 (1993).

56. Malmquist, *supra* note 55, at 146, 158.

57. American Association of University Professors, Annual Report on the Economic Status of the Profession 1999–2000 in Academe, March–April 2000, at 18–19 [hereinafter AAUP Annual Report].

58. *Id.* at 18–19, 37.

59. Compare *id.* at 38–92 with ABA-Approved Law Schools, *supra* note 1, at 86–151 (2001 edition).

60. AAUP Annual Report, *supra* note 57, at 18.

61. See Tables 7 and 8.

62. See Table 9.

Executive Committee is made up entirely of deans and full professors, and full professors are also the predominant group among AALS section chairs and chairs-elect. Here, too, there is more gender diversity than among the background populations. There is room for improvement, however. It is not unusual, for example, to find ABA site teams with one woman among five or six men.<sup>63</sup>

**Table 21**  
**ABA Section of Legal Education and Admissions to the Bar**  
**and the Association of American Law Schools**

	<i>Female percentage</i>
<i>ABA Section of Legal Education and Admissions to the Bar</i>	
Voting members of the Council (1999–2000) <sup>a</sup>	35% (7 of 20) <sup>b</sup>
Members of committees (1999–2000) <sup>c</sup>	30% (96 of 316)
Site evaluation teams (1998–99) <sup>d</sup>	29% (98 of 342)
<i>Association of American Law Schools</i>	
Executive Committee (1999–2000) <sup>e</sup>	44% (4 of 9)
Section chairs & chairs-elect (1999–2000) <sup>f</sup>	40% (62 of 155)

<sup>a</sup>Computed from ABA Consultant's 1998–99 Annual Report, *supra* note 4, at 62–65. The Council is the governing body of the ABA Section of Legal Education and Admissions to the Bar, which is also the accrediting authority for law schools.

<sup>b</sup>Raw numbers are in parentheses.

<sup>c</sup>Computed from ABA Section of Legal Education and Admissions to the Bar, Committee Directory 1999–2000 at 14–64 (Indianapolis, 1999). This line in the table reports places filled on section committees (as opposed to persons filling them). A person who serves on two committees is here counted twice, for example.

<sup>d</sup>Computed from ABA Consultant's 1998–99 Annual Report, *supra* note 4, at 62–65. ABA site evaluation teams inspect law schools for accreditation purposes and report to the Accreditation Committee. This line in the table reports places filled on site evaluation teams (as opposed to persons filling them). A person who served on two teams is here counted twice, for example. Numbers reported are for 1998–99 because 1999–2000 statistics were not available at the time of this study.

<sup>e</sup>Computed from AALS Directory of Law Teachers, 1999–2000 at 5 (Washington, 1999). The Executive Committee is the governing body of the AALS.

<sup>f</sup>Computed from Association of American Law Schools, AALS Sections <[www.aals.org](http://www.aals.org)> (visited March 1, 2000) (most recent modification date not shown). AALS section chairs take office at the annual meeting in January. Those listed as chairs served in 1999. Those listed as chairs-elect served as chairs in 2000. The total shown in this line is less than twice the number of sections because a few sections listed one person rather than two.

### *I. Faculty Hiring*

Table 22 reports the female percentages of entry-level hires at various ranks, as measured by the first appearance of a name in AALS directories. (A person appearing in the AALS Directory for the first time received an employment offer during the preceding academic year.) The data underlying Table 22 shows that during the period from 1992–93 through 1998–99, the female percentage of entry-hire associate professors was 39 percent. During the same period the female percentage of entry-hire assistant professors was 48 percent.<sup>64</sup> Men are thus being hired disproportionately as associate professors, and hiring at the assistant professor level is evenly split between women and

63. ABA Consultant's 1998–99 Annual Report, *supra* note 4, at 62–65.

64. AALS Statistical Report, *supra* note 29, Table 4 (1997–98 and 1999–2000 editions).

men. Deborah Merritt and Barbara Reskin found the same thing in a cohort study of faculty hired from 1986 to 1991, using multiple regression to factor out differences in credentials, family commitments, and geographic constraints self-imposed by applicants.<sup>65</sup> The AALS data described above shows that what was happening from 1986 to 1991 is still happening now.

**Table 22**  
**Female Percentage of Persons Appearing for the First Time**  
**in AALS Directories, at Various Faculty Ranks<sup>a</sup>**

	1992	1993	1994	1995	1996	1997	1998	1999
	-93	-94	-95	-96	-97	-98	-99	-2000
Full professors (182) <sup>b</sup>	13%	25%	50%	36%	23%	21%	27%	33%
Associate professors (435)	50	34	32	35	40	40	43	40
Assistant professors (863)	48	54	54	51	39	47	52	36
Lecturers & instructors (910) <sup>d</sup>	60	69	62	72	58	66	69	68

<sup>a</sup>AALS Statistical Report, *supra* note 29, Table 4 (1997-98 and 1999-2000 editions).

<sup>b</sup>Total raw numbers are in parentheses.

<sup>c</sup>This represents half of only four positions.

<sup>d</sup>A large proportion of new lecturers and instructors are hired through local recruiting and not through the national AALS Faculty Appointments Register.

From 1992-93 through 1999-2000, the female percentage of applicants in the AALS Faculty Appointments Register fluctuated within a narrow range of 33 to 37 percent.<sup>66</sup> When these figures are compared with the female percentage of lawyers generally (28%<sup>67</sup>), it appears that women are seeking teaching jobs in disproportionately high numbers. In fact, the opposite is true.

The apt comparison is not with lawyers generally but with lawyers who are in their first decade of practice, which is when the career shift into teaching most commonly happens. The AALS has not published data about the graduation dates of applicants in the Faculty Appointments Register, but it seems reasonable to assume that the core of those in the 1992-93 through 1999-2000 registers graduated from 1983 (ten years before 1993) to 1995 (four years before 1999). From 1983 to 1995, the female percentage of total J.D. enrollment grew from 38 to 44 percent and in fact was 43 or 44 percent for seven of those thirteen years. The female percentage of each year's J.D. graduates tends to lag one or two percentage points behind the female percentage of all J.D. students, simply because each year's national first-year class brings a higher percentage of women than the preceding year's class did.<sup>68</sup> Although we do not know the exact dimensions of the gap, it is clear that women are applying for law school teaching jobs at a disproportionately

65. Merritt & Reskin, Sex, Race, and Credentials, *supra* note 43, at 205, 207, 252-56; Deborah Jones Merritt, The Status of Women on Law School Faculties: Recent Trends in Hiring, 1995 U. Ill. L. Rev. 93, 96, 98 (1995).

66. AALS Statistical Report, *supra* note 29, Tables 5A and 6A (1997-98 and 1998-99 editions). Eighty-four percent to 98 percent of candidates report their gender; since 1993 the percentage has always exceeded 90 percent. *Id.*

67. Debra Cassens, Snapshot of Progress: Women Steadily Gaining Ground in Association Leadership, Commission Report Reveals, A.B.A.J., April 2000, at 100.

68. First Year Enrollment, *supra* note 1. See Table 1.

*smaller* rate than would be expected from their presence in the population from which applicants for law faculty jobs are generally drawn.

The AALS measures "success" through its hiring conference by comparing one year's Faculty Appointments Register with the next year's Directory of Law Teachers. A person who appears in both is deemed successful. The definition of "success" is thus broad enough to include hires as a lecturer or instructor not involving any form of tenure track. Table 23 reports relative "success" rates for women and men.

**Table 23**

**"Success" Rates of AALS Faculty Appointments Register Candidates<sup>a</sup>**

	1992	1993	1994	1995	1996	1997	1998
	-93	-94	-95	-96	-97	-98	-99
Women	16%	12%	16%	9%	8%	14%	13%
	(53) <sup>b</sup>	(51)	(59)	(35)	(24)	(42)	(34)
Men	10%	9%	11%	11%	8%	12%	13%
	(66)	(71)	(85)	(70)	(45)	(63)	(65)

<sup>a</sup>AALS Statistical Report, *supra* note 29, Table 7B (1997-98 and 1999-2000 editions).

<sup>b</sup>Raw numbers are in parentheses.

The statistics in Table 23 are often quoted. They seem to show a steady stream of women gaining more access than men to tenure-track jobs. But for three reasons they do not show that at all.

First, over the periods reflected in Tables 23 and 24, only about half the newly hired assistant and associate professors were listed in the preceding year's Faculty Appointments Register<sup>69</sup>—which means that the other half are *not* factored into the AALS success rate shown in Table 23. Second, because a candidate is considered successful if hired at any rank—even as an off-tenure-track lecturer or instructor—and because the overwhelming majority of newly hired lecturers and instructors are women, as shown in Table 22, the female success rate in Table 23 has to be discounted if one is trying to determine the rate at which women are being hired onto the conventional tenure track. That does not mean, however, that the Table 23 female success rate should be discounted by the full percentages and numbers shown in the bottom line of Table 22. (Most lecturers and instructors are hired outside the Faculty Appointments Register.) Third, in every year shown in Table 23, the number of men hired through the register exceeded the number of women, and over the whole period 465 men were hired through the register and only 298 women were. The female percentages in Table 23 are higher only because barely more than a third of the applicants in the register are women.

*J. Producer Schools and Future Law Faculty Nationally*

The producer schools listed in Table 4 have, of course, a special role in determining the composition of law faculties nationally. About half of the conventionally tenure-tracked law faculty in the United States graduated from

69. AALS Statistical Report, *supra* note 29, Table 8A (1997-98 and 1999-2000 editions).

a producer school. Because one's experiences as a student can have some influence over the type of teacher one becomes later—and even whether one seriously considers becoming a teacher at all—the composition of faculties at producer schools can have an effect on legal education as a whole.

Table 24 shows that at producer schools there are fewer women among the conventionally tenured and tenure-track faculty than elsewhere. There are also fewer women among faculty outside the conventional tenure track, although it is impossible to tell whether that is caused by a general reluctance to hire women or by a more gender-neutral attitude toward jobs outside the conventional tenure track (despite the lower percentages of women among the conventionally tenured and tenure-track faculty).

**Table 24**  
**Average Female Percentage of Faculty at Producer Schools, by Status\***

	<i>Percentage conventionally tenured or on tenure track</i>	<i>Percentage not on a conventional tenure track</i>
Producer schools (12 schools)	22%	61%
Other schools (170 schools)	27	69

\*Computed from columns 1 and 2 in the Appendix. For identification of producer schools, see Table 4.

For each of the producer schools, Table 25 shows the three-year average female percentages of the conventionally tenured and tenure-track faculty and of the faculty outside the conventional tenure track, as well as the three-year average female percentage of the student body (all from the data in the Appendix).

And—because of the unique role that law review membership at producer schools plays in determining national law faculty—Table 25 shows, in column 4, the representation of female students on law review in the classes graduating in 1996 and 1997, as computed by Linda R. Hirshman. If the female percentage among full-time law review students in those graduating classes were equal to the female percentage of all full-time students in those graduating classes, the ratio in column 4 would be 1.00. If a school's ratio is below 1.00, women were chosen for law review in a smaller proportion than their presence in those graduating classes.<sup>70</sup> If the ratio is higher than 1.00, women were chosen for law review in a greater proportion than their presence in those graduating classes. The law review figures cover the period 1994–97, when students in the 1996 and 1997 graduating classes would have been eligible for law review. (Most of the selection decisions would have been made in 1994 and 1995.) The three-year student body averages in column 3, on the other hand, account for all students, including those who were still in their first year and thus ineligible for law review. The three-year averages in column 3 also cover a different period, fall 1996 through fall 1998.

70. A Woman's Guide to Law School 134–35 (New York, 1999). Hirshman tabulated these figures as percentages. To avoid confusion with other percentages in Table 25, I have converted them here into a ratio carried out to two decimal points. One hundred percent in her figures would appear here as 1.00. She did not count part-time students.

A law review's membership is subject to much greater year-to-year fluctuation than faculty or general student body statistics are. A law review is a relatively small group of people, half of whom are replaced each year, and methods of selection can be idiosyncratic. The numbers in column 4 would be much more reliable if they represented four- or five-year averages rather than two-year averages. For that reason, I computed no national average, and I did not add this data to other tables in this study. It is included in Table 25, despite limitations on its reliability, because law reviews at producer schools have a strong influence on the composition of future law school faculties. Given the limitations of this data, it is meaningful only at the extremes. Differences of degree in the middle are probably not significant.

Of the 158 schools for which Hirshman computed these figures, women were underrepresented at 90 schools and overrepresented at 66 schools. At the remaining two schools, women's representation on law review matched their representation in the two graduating classes.<sup>71</sup> Of the same 158 schools, those in the highest one-sixth had ratios between 1.14 and 1.64. Two of the twelve producer schools were among this group. The lowest one-sixth had ratios between .47 and .77. Five—nearly half—of the producer schools were among this group, and a sixth missed it by only .02. Those six are half the producer schools.

In a separate study, Mark R. Brown also found underrepresentation of women on the law reviews of highly ranked schools.<sup>72</sup> He studied the primary reviews at sixteen schools, including every school listed in Table 25 except Duke. (The additional schools in his group were UCLA, George Washington, Northwestern, Southern California, and Texas.) In the 1970s, 24 percent of the students at those sixteen schools were female, but only 17 percent of the law review members were. In the 1980s, 39 percent of the students but only 32 percent of the law review members were female.<sup>73</sup> From 1990 through 1994 (when his study ended), 42 percent of the students and 36 percent of the law review members were female.<sup>74</sup>

The *Becoming Gentlemen* study found that, in four successive classes at Penn, the female percentage of students chosen for law review was significantly less than the female percentage of those who applied.<sup>75</sup> A recent study of the University of Texas found that, in every year over a thirteen-year period, the female percentage of students on law review was smaller—often by wide margins—than the female percentage of students in the classes from which the law review was chosen.<sup>76</sup> But these findings were not reproduced in a similar study of a school not on anybody's list of producers: Brooklyn. There

71. *Id.* at 128, 139–54.

72. Gender Discrimination in the Supreme Court's Clerkship Process, 75 Or. L. Rev. 359, 368–77 (1996).

73. *Id.* at 368, 372.

74. *Id.* at 363, 368, 372.

75. Guinier et al., *supra* note 17, at 29.

76. Bowers, *supra* note 18, at 147.

the female percentages of law review students *exceeded* the female percentage of students in the class from which the review was chosen in six years out of ten, sometimes by wide margins.<sup>77</sup>

**Table 25**  
**Female Percentages of Faculty (by Status), Students,**  
**and Law Review Students at Producer Schools<sup>a</sup>**

	1 <sup>b</sup>	2 <sup>c</sup>	3 <sup>d</sup>	4 <sup>e</sup>
Georgetown	28%	49%	47%	.71
NYU	27	74	46	1.22
Averages for all U.S. law schools	26.3	67.9	45.08	
Duke	24	81	41	1.28
Pennsylvania	24	58	42	.95
Berkeley	23	70	51	.80
Chicago	22	31	41	.69
Stanford	22	*	43	.99
Virginia	20	50	37	.77
Yale	20	43	43	.72
Michigan	18	53	41	.74
Columbia	16	60	45	.98
Harvard	16	— <sup>f</sup>	41	.79

<sup>a</sup>Columns 1, 2, and 3 are from columns 1, 2, and 4 in the Appendix. Column 4 is from Hirschman, *supra* note 70, at 139–54.

<sup>b</sup>Column 1 shows 1996–99 average female percentage of conventionally tenured or tenure-track faculty.

<sup>c</sup>Column 2 shows 1996–99 average female percentage of faculty not conventionally tenured or tenure-tracked. An asterisk in this column indicates that the school employed an average of two or fewer person off the conventional tenure track during the period studied. With a sample per school that small, a school's gender percentage is not particularly meaningful.

<sup>d</sup>Column 3 shows fall 1996–fall 1998 average female percentage of J.D. student body.

<sup>e</sup>Column 4 shows 1996–97 ratio of female percentage of students on law review to female percentage of students in the graduating class. From Hirschman, *supra* note 70, at 139–54.

<sup>f</sup>Harvard refuses to publish this data. See note m in the Appendix.

### III. Assessment

#### A. What Do the Statistics Tell Us?

The majority of law students will soon be female, but there is statistical evidence that the pedagogical environment in law schools is not friendly to women, although that might be much more pronounced in some schools than in others. Most strikingly, female students outperform males in college but underperform—at least as measured by grades—in law school. Meanwhile, everywhere in legal education—among deans of various ranks, among faculty, in libraries—men predominate at the top ranks of employees, while women predominate at the bottom. It is very hard to argue that there is no connection between a pedagogical environment and law school employment practices.

Although the statistics of law school employment are gradually improving, the rate of change has become much slower than is generally assumed. In fact

77. Garrison et al., *supra* note 22, at 544. (The Brooklyn study was not a comprehensive gender self-study of the entire institution.)

the rapid progress of earlier years has now become so slow that if practices do not change, it will be a very long time—decades, in fact—before a substantial improvement could be noticeable. At the threshold—entry-level hiring—the percentage of women using the AALS Faculty Appointments Register appears to be smaller than the percentage of women among lawyers at the experience level from which initial faculty hiring normally occurs. Women are being hired, on average, at lower academic ranks than men. And, years later, women receive tenure at lower rates than men do.

If all of these things were remedied—if women were to apply for faculty jobs as frequently as men do, if they were hired as frequently and at the same ranks as men, and if they were tenured as often as men—progress would not be as slow as it is now, but it would not break speed limits either, simply because faculty vacancies will not be abundant in the near future. As one dean put it after reviewing an earlier version of this study:

[My school has] a large number of senior faculty who were hired in the 60s and 70s, and most of them are men. Without compulsory retirement (and without my ability to shoot them), they will continue until they retire or die. Since most appear relatively pleased with their jobs and in good health, the turnover rate has been and will continue to be low.

Low turnover certainly constrains improvement in faculties, but it does not explain why less than 13 percent of deans themselves are women. Folklore has it that the average life of a deanship is a little more than three years, although one study concluded that it is really four years.<sup>78</sup> In any event, deanships are so short—and hiring a dean is so problematic and time consuming—that, if a sufficient number of qualified women were to apply for deanships and if the appointing authorities were to evaluate them objectively, a rapid increase in the number of female deans could quickly occur.

The line between the conventional tenure track and lesser forms of faculty employment has become a line of gender segregation.<sup>79</sup> Wherever jobs exist off the conventional tenure track, women are being hired into them at very high frequencies, and at those same schools proportionately fewer women are being hired onto the conventional tenure track. This is so not just on average. As the Appendix demonstrates, it is true virtually *everywhere*. The same pattern occurs in other ways in legal education, as lesser jobs—assistant deans and nondirector 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. As Norman Redlich has pointed out, in American law schools where people of one gender are supervised by people of the other

78. Jagdeep S. Bhandari et al., Who Are These People? An Empirical Profile of the Nation's Law School Deans, 48 J. Legal Educ. 329, 336 (1998).

79. "Occupational segregation clusters women in low-wage jobs" and excludes them "from the upper echelons of the professions." Nancy Levit, *The Gender Line: Men, Women, and the Law* 57 (New York 1998). See also *id.* at 15–63; *Women's Work, Men's Work: Sex Segregation on the Job*, eds. Barbara F. Reskin & Heidi I. Hartmann (Washington, 1986).

gender, it is nearly always women being supervised by men.<sup>80</sup> In a law school one hardly ever sees a man reporting to a woman.

If the statistics on clinicians, legal writing directors, library directors, and university faculties are accurate for law faculties generally, women are paid less than similarly qualified men within the same status (tenured, tenure-track, etc.). When people of different status are compared, the gaps can be startling. It is not unusual for a newly hired person on tenure track to earn *double* the salary of off-tenure-track teachers at the same school, even where the off-tenure-track people have far more experience.<sup>81</sup> Because 74 percent of conventionally tenured and tenure-track faculty are men and 66 percent of faculty *off* the conventional tenure track are women, one naturally asks not only whether a person in the first year of teaching can really be twice as valuable as another, more experienced teacher, but also whether the pay differential is connected to the gender differential.

Legal writing is overwhelmingly female, and it holds the lowest status of any field of law school teaching. The possible explanations may be complex, but most of them are not benign. As one male legal writing director commented after seeing the statistics in this study:

I've directed legal writing programs for more than a decade and at more than one school. Once you get on the tenure track, as I have, deans and other professors are very likely to reveal to you their presumptions and biases about the gender makeup of the best candidates for certain kinds of positions in a law school. While many deans and faculty members are uncomfortable with, or want to change, the status of women in law schools, others do not share those beliefs.

Far too many deans and faculty members assume that only women will take the law school jobs requiring intensive individualized teaching or mentoring of students. They further assume that women are more suited for such roles. Others will be very frank about their interests in improving the school's apparent gender balance by recruiting women for second-class-status positions in administration or teaching. I have lost count of the number of times I've heard people say things like "Can't we just find and hire a few bright women in town who have left practice to have babies?" Many assume that the second-class jobs should be filled by the second wage earner in the family, and they determine pay accordingly. They believe that a woman who does the job well either will do it for a short time before returning to practice or will do it longer and not move on because family commitments make her geographically immobile, and that in either case she will accept the lower pay and not challenge the inequities of her position for fear of losing her job to another, also fungible, replacement. The statistics bear out the widespread prevalence of these beliefs, whether consciously or unconsciously held.

When challenged about the gender line separating teachers who are not conventionally tenured or tenure-tracked from those who are, some deans answer that they are only responding to a market that allows people to take the jobs for which they are qualified and determines through supply and demand

80. The Environment for Women Students and Faculty Members in American Law Schools: Appointment and Status of Women Faculty, in *Women in Law*, ed. Shimon Shetreet, 155, 157 (Cambridge, Mass., 1998).

81. Levine & Stanchi, *supra* note 24.

what they will be paid. Robert L. Nelson and William P. Bridges examined the exhaustive factual records developed in four landmark pay discrimination lawsuits and found that in none of them could "gender inequality . . . be explained by market forces or efficiency reasons,"<sup>82</sup> despite the market data offered by employers to justify their positions.<sup>83</sup> Instead employers did what they felt like doing and used the market as an excuse.<sup>84</sup> If a substantial majority of employers do whatever they want and use the market as an excuse, a free market is—to that extent—not actually operating. In fact, gender segregation tends to be rationalized on grounds that seem hopelessly arbitrary.

For example, in 1917 there was a shortage of male bank workers [who had been inducted into the army during World War I]. Low-level banking jobs were then described by banks as suitable for women because women were neat, tactful, and intuitive. During the Depression, a surplus of males led banks to redefine the same jobs as unsuitable for women, on the grounds that the banking public would not want women to handle their money. During World War II, jobs as tellers were again seen as suitable for women, on the grounds that women were good at dealing with the public. . . . *Jobs, it seems, can change their gender at employers' will.*<sup>85</sup>

What could be causing the difference in tenuring rates? A survey in the early 1990s of faculty and students at the nine Ohio law schools suggests some of the reasons. Forty-one percent of the female faculty (but only 7 percent of the male faculty) disagreed with the statement "Mentors are equally accessible to male and female faculty." Fifty-six percent of the female faculty (but only 16 percent of the male faculty) disagreed with the statement "Students at this law school assume that all female teachers are competent to teach."<sup>86</sup> Forty-eight percent of the female students (compared to 18 percent of the male students) agreed that "[f]emale faculty have [a] heavier burden than males to prove competence."<sup>87</sup>

Academics comfort themselves that they live in a meritocracy, but all four traditional tenure criteria (scholarship, teaching, collegiality, and service) are so subjective that except at the extremes—candidates whom anyone or no one would tenure—a tenuring authority can rationalize any result it wants.<sup>88</sup>

Of the four traditional tenure criteria, collegiality may be the most problematic for women. The practical definition of collegiality differs, of course, from faculty to faculty. At some schools, a candidate is uncollegial only if the

82. *Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America* 310 (New York, 1999).

83. *Id.* at 312–13.

84. *Id.* at 313–17.

85. Virginia Valian, *Why So Slow? The Advancement of Women* 114 (Cambridge, Mass., 1998) (emphasis added).

86. Krauskopf, *supra* note 21, at 329.

87. *Id.* at 314.

88. Carl Tobias, *Engendering Law Faculties*, 44 U. Miami L. Rev. 1143, 1147–53 (1996). There is more than a grain of truth in the jest that "[a]ll your achievements aren't worth a hill of chalk dust if your senior colleagues hate you." Lawrence Douglas & Alexander George, *Gaining Tenure: Rules Your Chairman Never Told You*, *Chron. Higher Educ.*, May 5, 2000, at B10.

candidate's personality makes it difficult for others to do their work. But at others, an uncollegial candidate is one who has not formed bonds with the tenured faculty that the latter find pleasing—who does not fit snugly, in other words, into a tight community. A study of gender issues among academic scientists found that “there remain some cultural factors that make women feel out of place in a predominantly male group of colleagues. As one woman said, ‘there’s always a sense, especially in a group that does not include many women, that you’re not one of the guys, and that works against you, and that is impossible to fight, of course.’”<sup>89</sup>

In addition, there is evidence that at least some academics are unable to avoid undervaluing professional work once they know it was done by a woman—a problem that can affect not only tenuring rates but also hiring and job status decisions.

The Modern Language Association . . . discovered an enormous increase in the submission/acceptance ratios of papers authored by women for presentation at the annual meeting when it adopted an anonymity rule. . . . [This] was considered such clear evidence of prior sex discrimination that the anonymity rule was extended to all MLA journals. . . . When resumes, identical except for name and sex, were given to chairmen of psychology departments, more men were considered suitable for tenure-track positions than women. Male candidates also were offered the hypothetical positions at higher ranks . . . .<sup>90</sup>

In these situations, academics consciously or unconsciously undervalued work merely because a woman's name had been attached to it.

In addition, cultural preconceptions can lead one to assume that a given action indicates strength if it comes from a man and weakness if it comes from a woman. Faculty do it, and so do students. Deborah Merritt, Barbara Reskin, and Michelle Fondell found that among a cohort of people entering law school teaching, the men who limited their geographical availability for family reasons received better job offers than men who did not, while a less pronounced but opposite effect was observed among women.<sup>91</sup> And Christine Haight Farley studied 2,270 student evaluations submitted in first-year courses at one law school from spring 1993 through fall 1995. Students habitually interpreted identical behavior as a strength, even a flawed strength, in men and a weakness in women. For example, compare

89. Gerhard Sonnert, *Who Succeeds in Science? The Gender Dimension* 142 (New Brunswick, N.J., 1995).

90. Zenoff & Lorio, *supra* note 43, at 884–85. A study of hiring data for eight U.S. symphony orchestras—including all of the Big Five (Boston, Chicago, Cleveland, New York, and Philadelphia)—revealed the same thing. Despite the orchestral world's meritocratic self-image, a switch to blind auditions was associated with substantial increases in the rates at which women were hired. Claudia Goldin & Cecilia Rouse, *Orchestrating Impartiality: The Impact of “Blind” Auditions on Female Musicians*, 90 *Am. Econ. Rev.* 715, 721–23, 738 (2000). In a typical blind audition, a screen is placed between the candidate and the selection committee, who know the candidate by number rather than by name. *Id.* at 721–22.

91. Merritt et al., *supra* note 43, at 396–97.

*He speaks too fast—it's hard for him to come down to our level.*

with

*She speaks too quickly. She must be nervous.*<sup>92</sup>

Moreover, students saw characteristics that acculturation has led them to assume should be there. Students tended to see in male teachers knowledge, dynamism, and a good sense of humor, and they tended to see female teachers as caring but lacking the ability to lead a large class.<sup>93</sup> "These comments reveal that students are preoccupied with the gender of their professor and that they see everything through this filter. If students are having this much trouble seeing women as law professors, it is safe to assume that some male faculty members will also have difficulty."<sup>94</sup>

What could explain the lower rates at which women use the Faculty Appointment Register? The gender difference seems inexplicable, given the reputation law practice jobs have for stress and brutal time demands as well as the traditional and persisting differences between men and women in childcare involvement. Can it really be that men are more willing than women to give up income to enter academia? Or that women more than men enjoy the aggression that pervades much of law practice? A more likely place to look for an explanation might be at the producer schools where about half of law teachers received their own education.

The producer schools enroll female students at roughly the same rates as other schools do. But at the producer schools women appear to graduate with lower grades than men, are more often cut off from valuable academic credentials (such as law review), and are perhaps less favorably credentialed in other ways. Thus, even if the faculty hiring market were completely unbiased, women graduating from the producer schools might be less competitive in that market than men who graduated from the same schools. Moreover, the faculties at producer schools include fewer women than elsewhere. If those figures are the tip of an iceberg, they suggest that below the water line we would find that female students at producer schools see fewer academic role models, get less mentoring, and in general encounter a more hostile academic environment. (The *Twenty Women*<sup>95</sup> and *Becoming Gentlemen*<sup>96</sup> studies of female students' experience at, respectively, Yale and Penn detail environ-

92. Farley, *supra* note 36, at 336–43. Michelle Rostholder, Hofstra law class of 2001, captured this phenomenon in poetic form:

We're opinionated, they're intellectuals  
We're pushy, they're forceful  
We're overemotional, they're sensitive  
We manipulate, they strategize  
We're obsessed, they're committed  
We're relentless, they're persevering  
We're stubborn, they're sticking to their guns  
We're women, they're men.

93. *Id.* at 338.

94. *Id.* at 342.

95. Weiss & Melling, *supra* note 22.

96. Guinier et al., *supra* note 17.

ments that can only be described as uncivilized.) If all this is true, one can understand why fewer of those women would want to return to legal education as teachers or would feel capable of doing so.

### B. How Might Legal Education Discriminate?

In a past era, "it was easy to spot gender discrimination in the corporate world. A respected female executive would lose a promotion to a male colleague with less experience, for instance, or a talented female manager would find herself demoted after her maternity leave. Today such blatant cases are rare" because of changes in the law and in public opinion. But discrimination persists

underground . . . in a plethora of work practices and cultural norms that only appear unbiased. They are common and mundane—and woven into the fabric of an organization's status quo—which is why most people don't notice them, let alone question them. But they create a subtle pattern of *systemic* disadvantage, which blocks all but a few women from career advancement.<sup>97</sup>

The explanations people give for their behavior are not necessarily the explanations that an objective observer would formulate after watching the behavior long enough to notice patterns. What we think we do and what we actually do are often different things. This is Chris Argyris and Donald A. Schön's oft-cited dichotomy between a theory of action (what we say we do) and a theory-in-use (what we really do).<sup>98</sup> We are not objective observers of ourselves, and when asked to explain why we have done what we have done, we tend to think up rationalizations consistent with the principles we want to be associated with.

That makes it hard for us to change. We resist because we mistakenly believe that we are doing something other than what we really are doing. Or, as Robert Seibel put it in his study of salaries paid to clinicians: "Well-meaning individuals, perhaps unknowingly, perpetuate institutional and societal factors that lead to discrimination. *It is particularly difficult to ameliorate an unfair impact when some of the key people in power believe they are acting in a neutral or nondiscriminatory way.*"<sup>99</sup>

In 1999 the Massachusetts Institute of Technology released a report on whether it had discriminated against its own female faculty. The report's conclusion, endorsed by MIT's president, was that the institution had discriminated in ways that hurt not only the affected faculty members but also students and MIT itself as a place of higher learning. In an introduction to the study, the chair of the MIT faculty wrote that "gender discrimination in the 1990's is subtle but pervasive, and stems largely from unconscious ways of thinking that have been socialized into all of us, men and women alike."<sup>100</sup>

97. Debra E. Meyerson & Joyce K. Fletcher, A Modest Manifesto for Shattering the Glass Ceiling, *Harv. Bus. Rev.*, Jan.-Feb. 2000, at 127, 128.

98. *Theory in Practice: Increasing Professional Effectiveness* 6-7 (San Francisco, 1974).

99. Seibel, *supra* note 53, at 541 (emphasis added).

100. Massachusetts Institute of Technology, A Study on the Status of Women Faculty in Science at MIT 3 (Cambridge, Mass., 1999).

Based on an interim version of the report, MIT began widespread efforts in 1995 to reverse discrimination in personnel decisions, teaching assignments, and the allocation of resources such as lab space, leading one senior professor to say that she had seen "more progress for women faculty at MIT in one year than was accomplished in the previous decade."<sup>101</sup>

The statistics presented here suggest that many law schools individually and legal education generally could profit from the same sort of reflective self-examination that MIT undertook. (The ABA Commission on Women in the Profession has urged each law school to conduct a gender self-study and has provided a methodology for doing so.<sup>102</sup>)

The statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence. In the next few years, we will discover the extent to which that impression continues to be accurate.

101. *Id.* at 9.

102. Commission on Women in the Profession, American Bar Association, *Don't Just Hear It Through the Grapevine: Studying Gender Questions at Your Law School* (Chicago, 1998).

## Appendix

### School-by-School Female Percentages of Faculty and J.D. Students

For an explanation of the Appendix and how it was compiled, see the text, section II.D.

	<sup>1</sup>	<sup>2</sup>	<sup>3</sup>	<sup>4</sup>
Averages for all schools <sup>a</sup>	26.3%	67.9%	28.8%	45.08%
CUNY	60	88	56	61
Thomas Jefferson	54	none	50	39
North Carolina Central	51	71	54	56
Northeastern	43	70	43	67
New Mexico	41	*	47	51
Western State <sup>f</sup>	41	none	45	42
Pontifical Catholic	40	none	39	53
California Western	39	75	42	51
Georgia State	39	100	30	50
Hawaii	39	none	39	51
Inter American	39	*	44	55
Syracuse	38	*	39	45
Michigan State	37	60	38	39
Wyoming	37	none	40	43

<sup>a</sup>Column 1 shows the 1996–99 average female percentage of conventionally tenured or tenure-track faculty.

Columns 1 and 2 are derived from data published in the AALS directories of law teachers for 1996–97, 1997–98, and 1998–99. The AALS data comes from questionnaires filled out late in the spring of the first year in the directory title, at a point when schools and individual teachers have already made their plans for the following fall.

<sup>b</sup>Column 2 shows the 1996–99 average female percentage of faculty not on a conventional tenure track. For the source, see note a.

An asterisk in this column indicates that the school employed an average of two or fewer persons off the conventional tenure track during the period studied. With a sample per school that small, a school's gender percentage is not particularly meaningful. But the sum of all the data that has been replaced here by asterisks has been incorporated into the statistics reported in Tables 14 through 17. When their statistics are combined, the 30 asterisked schools almost exactly track the averages for all schools. As a group, their female percentage of conventionally tenure-tracked and tenured faculty is 27 percent, and the female percentage of their faculty off the conventional tenure-track is 67 percent. See Table 15. The averages for all schools are shown at the top of the Appendix.

<sup>c</sup>Column 3 shows the average female percentage, fall 1996 through fall 1998, of "full-time faculty" as computed by the ABA (see explanation in text).

Columns 3 and 4 are based on chapter 11 of the Official American Bar Association Guide to Approved Law Schools for 1998, 1999, and 2000. The 1998 volume was published in 1997 and is derived from the annual questionnaire submitted by the school to the ABA in fall 1996. The 1999 book was published in 1998 and based on the fall 1997 questionnaire. The 2000 book was published in 1999 and based on the fall 1998 questionnaire. These three ABA books and the three AALS Directories referenced in note a cover the same three academic years, despite the differences in their title dates.

<sup>d</sup>Column 4 shows the average female percentage, fall 1996 through fall 1998, of the J.D. student body. For the source, see note c.

<sup>e</sup>The percentages in this line are carried out to one decimal point because the numbers are large enough for differences within a decimal point range to be meaningful. Percentages for individual schools are rounded to the nearest whole percent because the raw numbers are so small that differences of less than a percentage point are more deceptive than meaningful.

<sup>f</sup>Based on one year's figures (1998). Previously, the school was unaccredited.

	1	2	3	4
Brooklyn	36%	86%	46%	47%
District of Columbia	36	100	40 <sup>s</sup>	53 <sup>s</sup>
Loyola/L.A.	36	69	36	46
Tulsa	36	*	39	42
Vermont	36	67	44	47
Washington University	36	92	38	43
West Virginia	36	67	35	47
Akron	35	*	35	43
Baltimore	35	none	37	49
Chapman <sup>h</sup>	35	none	31	48
Creighton	35	*	29	41
Roger Williams	35	none	38	43
SUNY Buffalo	35	62	33	48
Widener/Harrisburg	35	*	41	40
Hamline	34	72	34	50
Marquette	34	*	36	42
Widener/Wilmington	34	89	39	46
DePaul	33	82	35	48
Seton Hall	33	69	33	44
Capital	32	*	28	45
Cincinnati	32	88	33	52
Chicago-Kent	32	47	29	47
North Carolina	32	75	35	49
Oregon	32	*	37	50
Pace	32	none	35	54
Pittsburgh	32	75	41	41
Santa Clara	32	88	39	49
Catholic	31	53	31	48
John Marshall	31	*	27	43
Maryland	31	71	38	53
Memphis	31	58	30	43
Mississippi College	31	*	37	37
Montana	31	60	42	43
Quinnipiac	31	74	32	39
William Mitchell	31	*	31	48
California/Hastings	30	71	28	48
Cleveland State	30	63	30	46
Louisville	30	*	27	44
Minnesota	30	55	29	44
Missouri/K.C.	30	57	28	47
North Dakota	30	92	45	39
Seattle	30	75	34	51
St. Mary's	30	94	27	48
University of Washington	30	100	43	52
American	29	69	35	60
Maine	29	*	27	42
New York Law School	29	55	29	47
Pennsylvania State	29	43	28	43
Thomas Cooley	29	none	28	37
Valparaiso	29	58	35	46
Boston College	28	66	32	50
Georgetown	28	49	33	47
Golden Gate	28	68	37	57
Northern Kentucky	28	none	25	39
Tennessee	28	none	32	46
Washburn	28	*	34	43
Whittier	28	100	35	49

<sup>s</sup>Based on two year's figures (1996 and 1998) because 1997 figures have not been published.

<sup>h</sup>Based on one year's figures (1998). Previously, the school was unaccredited.

	1	2	3	4
UCLA	27%	71%	26%	48%
Franklin Pierce	27	*	23	37
Kentucky	27	*	26	41
NYU	27	74	28	46
Nova	27	67	39	43
San Francisco	27	*	30	53
Southern Methodist	27	39	22	45
Southwestern	27	43	28	51
St. John's	27	44	29	40
Temple	27	83	26	49
Wayne State	27	73	27	47
Baylor	26	none	25	35
Cornell	26	44	26	42
Illinois	26	50	30	40
San Diego	26	76	25	42
Southern Illinois	26	75	32	39
Texas Southern	26	70	22	46
Willamette	26	43	24	45
Arkansas/Little Rock	25	87 <sup>a</sup>	31	48
Connecticut	25	29	22	47
Florida State	25	67	31	44
Gonzaga	25	31	24	40
Howard	25	77	29	55
Indiana/Bloomington	25	65	21	42
Lewis & Clark	25	52	29	46
Ohio State	25	70	26	46
Richmond	25	100	34	47
Texas Tech	25	none	23	40
Touro	25	86	36	43
Utah	25	82	21	36
Arkansas/Fayetteville	24	61	29	39
Denver	24	100 <sup>b</sup>	24	50
Duke	24	81	33	41
Loyola/New Orleans	24	56	32	47
South Texas	24	35	27	43
Fordham	24	85	23	44
Northern Illinois	24	*	25	39
Oklahoma City	24	67	21	40
Pennsylvania	24	58	20	42
St. Thomas	24	60	27	39
Wisconsin	24	54	32	47
Albany	23	84	33	52
California/Berkeley	23	70	22	51
Detroit Mercy	23	100	21	48
Miami	23	73	23	44
University of Mississippi	23	*	19	39
Rutgers/Camden	23	84	21	46
Southern California	23	71	30	44
Stetson	23	50	28	53
William & Mary	23	none	30	46

<sup>a</sup> During the 1999–2000 academic year, Arkansas/Little Rock offered to all its non-tenure-track faculty an opportunity to convert to the tenure track, and most accepted the offer.

<sup>b</sup> These positions—all but one of them clinical—were converted to tenure-track from 1997 to 2000. In addition, six new full-time off-tenure-track legal writing positions were created in 1999–2000.

	1	2	3	4
Chicago	22%	31%	21%	41%
Drake	22	88	26	43
Loyola/Chicago	22	62	23	57
Rutgers/Newark	22	72	31	46
Saint Louis	22	50	22	45
Stanford	22	*	29	43
Wake Forest	22	100	30	39
Alabama	21	33	25	40
Boston University	21	72	33	47
California/Davis	21	67	35	49
Dayton	21	91	29	42
Iowa	21	63	28	42
Duquesne	21	53	27	44
Florida	21	80	27	42
McGeorge	21	71	21	47
Mercer	21	11 <sup>a</sup>	24	39
New England	21	67	27	49
Samford	21	none	19	35
Southern University	21	100	38	47
Toledo	21	81	29	44
Tulane	21	29	25	48
Washington & Lee	21	*	18	40
Yeshiva	21	71	28	47
Arizona	20	*	34	49
Arizona State	20	*	22	49
George Washington	20	68	29	44
Idaho	20	*	28	35
Missouri/Columbia	20	89	23	39
Virginia	20	50	22	37
Yale	20	43	20	43
Brigham Young	19	none	18	33
Kansas	19	75 <sup>b</sup>	21	39
Puerto Rico	19	*	19	58
Vanderbilt	19	60	18	40
Hofstra	18	71	15	45
Houston	18	44	17	42
Michigan	18	53	27	41
Northwestern	18	55	21	44
Oklahoma	18	89	24	44
South Dakota	18	*	15	38
Suffolk	18	58	17	50
Western New England	18	100	21	49
Case Western Reserve	17	40	19	44
Indiana/Indianapolis	17	88	28	45
Nebraska	17	67	16	42
Regent	17	none	22	37
Villanova	17	67	17	45
Colorado	16	54	16	47
Columbia	16	60	25	45
George Mason	16	*	14	39
Harvard	16	— <sup>m</sup>	15	41
Notre Dame	16	100	17	41
Pepperdine	16	50	19	45
Texas	16	76	21	44

<sup>a</sup>During 1999 Mercer offered to its non-tenure-track faculty an opportunity to convert to tenure-track.

<sup>b</sup>For the 1999–2000 academic year, Kansas expanded its clinics and hired full-time legal writing faculty to a total of nine positions, eight of which are filled by women.

<sup>m</sup>Although Harvard is known to employ, full time, a significant number of people who teach law students by supervising them in clinical settings, it refuses to publish their names in AALS directories or in the school's catalog. Telephone inquiries to clinical administrators produce no information about them.

	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>
Georgia	15%	69%	21%	45%
Campbell	14	*	7	45
Emory	13	73	11	46
Ohio Northern	13	63	25	35
Louisiana State	12	*	11	46
South Carolina	12	none	12	41
Texas Wesleyan	11	100	20	42