Faculty Mentoring as a Way to End the Alienation of Women in Legal Academia

Heather A. Carlson
FACULTY MENTORING AS A WAY TO END THE ALIENATION OF WOMEN IN LEGAL ACADEMIA

HEATHER A. CARLSON*


Lani Guinier’s Becoming Gentlemen: Women, Law School, and Institutional Change exposes the fact that although women and minorities are being admitted to law schools in unprecedented numbers, they are not achieving the same academic success as their white male peers.1 Guinier’s studies reveal that the law school pedagogy itself alienates women, negatively affects their academic success, and thereby reproduces and legitimizes existing social stratification.2 This phenomenon has dangerous implications because law schools are political institutions as well as educational ones.3

The “first-generation” of diversity, focused on the need for access to white, all-male institutions, arguably succeeded because the numbers of men and women entering our nation’s law schools are now nearly equal.4 Rather than allowing law schools to be lulled into complacency by the equal matriculation rates, Guinier reminds her audience that a “second-generation” of diversity must still be achieved.5 Mere access to institutions for women and minorities is not enough if

* Staff Writer, BOSTON COLLEGE THIRD WORLD LAW JOURNAL.
1 See LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 12 (1997). Indeed, this trend seems to be intensified at the nation’s most elite law schools, whose graduates are likely to become influential policy makers and scholars. See id. at 12–13, 75.
2 See id. at 2, 61, 76.
3 See Susan P. Sturm, From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession, 4 DUKE J. GENDER L. & POL’Y 119, 124 (1997); see generally MONA HARRINGTON, WOMEN LAWYERS: REWRITING THE RULES, 1–12 (1993). Objectivity, valued so highly in law school education, can mask the harms it is meant to prevent by allowing perspectives of socially dominant groups to dominate law. See Harrington, supra, at 47–48.
4 See GUINIER, supra note 1, at 75.
5 See id.
they must conform and become gentlemen once there. The “second-generation” of diversity should focus on institutional acceptance and absorption of diversity in place of the imposition of a “one-size-fits-all” mentality.

Guinier’s proposed solutions for eliminating alienation and the academic gender gap between law students cannot be realized until women are a significant part of the faculty that sets and maintains new standards. While Guinier believes that more should be done than simply “adding women and stirring,” her latest work provides a timely contribution to the defense of affirmative action policies in law school faculty hiring decisions. The evidence of alienation and disproportionate success for women students which Guinier presents suggests the need for a renewed, more aggressive recruitment and tenuring of women faculty for prominent positions. The alienation of women and certain minority students would be exacerbated by premature cutbacks or abandonments of those policies, according to Guinier’s research.

Part I of this book review will summarize Guinier’s methodology, conclusions, and recommendations. Part II will relate her findings to other recent scholarly work on the phenomenon of stratification of traditionally marginalized groups in legal education. Part III explains that Guinier’s recommendation to develop more mentoring relationships between women and minority faculty and students complements the arguments in favor of having affirmative action policies in law school faculty decision-making. Part IV describes the present threat to affirmative action in academia and the timely significance of her findings to that debate. This book review concludes that while Guinier’s findings are valuable, law schools need to first focus on providing women with equal access to desirable faculty positions before her recommendations can become a meaningful reality.

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6 See id. at 76–77.
7 See id.
8 See id. at 73–76, 97.
9 See GUINIER, supra note 1, at 21, 77, 97.
10 Cf. id. at 2 (commenting that because gender divisions still remain in previously male-dominated institutions, some women students feel isolated, marginalized, and dissatisfied).
11 See id.
I. How Women Are Becoming Gentlemen

Lani Guinier, with her co-authors, Michelle Fine and Jane Balin, weave together the results of three separate studies at the University of Pennsylvania Law School to conclude that women are being marginalized and suffering academically once in law school. Although the scope of their study was limited to one school, the uniform characteristics of American law school admission standards, curriculum, and predominantly male faculties suggest similar results at other institutions.

A. Methodology

The authors collected and analyzed three different databases. The first of these databases is entitled the Bartow Survey, appropriately named for one of Guinier's former students, Ann Bartow. During her third year of law school in 1990, Bartow approached Guinier about doing a project on differing gender perceptions of law school. To-

12 See id. at 85. The title of the book derives from Lani Guinier's own law school experience at Yale Law School in the early 1970's. See id. One professor used to enter the classroom everyday with a greeting of "Good morning, gentlemen" after reassuring the few women students that they were gentlemen in his mind as well. See id. While meant as an honor, Guinier reflects that it had an alienating effect on her. See id.

13 Michelle Fine is a Professor of Social Psychology at the Graduate School and University Center, City University of New York. See Lani Guinier et al., Becoming Gentlemen: Women's Experiences at One Ivy League Law School, 143 U. Pa. L. Rev. 1 (1994).

14 See id. Jane Balin is an Assistant Professor of Sociology at Colgate University. See id.

15 See Guinier, supra note 1, at 27. Their findings were originally documented in a law review article at the University of Pennsylvania, and this recent book expands on the significance of those findings. See Guinier et al., supra note 13, at 1. Guinier's study is based on the experiences of women at the University of Pennsylvania, an elite law school, but other institutions have mirrored these results with their own studies. See Guinier, supra note 1, at 12–13; see, e.g., COMMITTEE ON GENDER ISSUES IN THE LAW SCHOOLS, THE OHIO SUPREME COURT AND OHIO BAR ASSOCIATION, THE ELEPHANT IN OHIO LAW SCHOOLS: A STUDY OF PERCEPTIONS—EXECUTIVE SUMMARY; Suzanne Homer & Lois Schwartz, Admitted but Not Accepted: Outsiders Take an Inside Look at Law School, 5 BERKELEY WOMEN’S L.J. 1, 37–38 (1989–90) (reporting the alienation of women law students at Boalt Law School); 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, 1234 (1988) (recognizing the same phenomenon among women students at Stanford Law School); Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 STAN. L. REV. 1299, 1332–59 (1988) (discussing women students' experiences at Yale Law School).

16 See Guinier, supra note 1, at 57, 109 n.1. But see Linda Hirshman, Men, Women, and Law School, CHI. TRIB., May 22, 1997, at N31 (arguing that Law School Admissions Council surveys reveal that differences between men's and women's average grades are so minimal as to be statistically insignificant).

17 See Guinier, supra note 1, at 6–7.

18 See id. Ann Bartow was inspired to take on this project after watching a video that depicted
gether, Guinier and Bartow developed a questionnaire consisting of seventy multiple choice questions and one open-ended question at the end.\(^1\) These questions were designed to elicit the attitudes and expectations of law students regarding their legal education.\(^2\) The Bartow Survey was then sent, via mailboxes at the law school, to all 712 students enrolled at the University of Pennsylvania Law School in April, 1990.\(^3\) Of the 366 respondents, 47.5% identified themselves as women.\(^4\)

The second database contained a quantitative analysis of demographic information about 981 students enrolled at the law school from 1990-93.\(^5\) In order to determine the relationship between academic performance and gender, this analysis used a variety of factors including undergraduate grade point average (GPA), undergraduate rank, prestige of undergraduate institution, LSAT score, GPA for each year of law school, sex, and race.\(^6\)

The third database consisted of qualitative information gathered from the narrative, open-ended question at the end of the Bartow Survey.\(^7\) The authors also included in this database the comments from discussions with a focus group of twenty-seven students,\(^8\) observations from a critical legal perspectives seminar, information from meetings of the Women’s Law Group at the University of Pennsylvania Law School, and conversations with law school faculty members.\(^9\) These responses were meant to add personal insights and a subjective dimension to the quantitative data and academic performance records.\(^10\)

\footnotesize{1} See id. She felt that this parody also applied to the experience of law students and professors. See id. \footnotesize{2} See id. at 7. \footnotesize{3} See id. at 30. The full text of the questionnaire is included at the end of this chapter. See id. at 78–84. \footnotesize{4} See id. at 30. \footnotesize{5} See Guinier, supra note 1, at 30. \footnotesize{6} See id. at 30–31. The number 981 represents only those students at University of Pennsylvania Law School from 1990–93 who had a complete transcript; some students who transferred, took time off, or dropped out were not included in the study. See id. The study contained the full academic performance record for the classes of 1990 and 1991; the first two years for the class of 1992; and the first year for the class of 1993. See id. Of these 981 students, 712 students were given the Bartow Survey and 366 responded. See id. \footnotesize{7} See id. at 31. \footnotesize{8} See id. \footnotesize{9} See id. The focus group was composed of white students, students of color, males and females. See id. \footnotesize{10} See Guinier, supra note 1, at 31. \footnotesize{11} See id. at 32. The authors recognize that the people who took the time to fill out the answers and come to the focus group may not be representative of the whole student body because their
B. Findings: Becoming Gentlemen

When these databases were triangulated, Guinier discovered that throughout the course of law school, women become closer in attitude to their male peers as an academic gap between them widens. Guinier attributes this problem of women losing their unique voice to the "one-size-fits-all" teaching approach in standard use at law schools. Generally, those women who feel alienated by the highly individualistic classroom atmosphere develop lower self-confidence, which translates into poor test performances and lower grades. Thus, Guinier's study reveals that there may be an academic price to pay for failing to fit within the uniform, "one-size-fits-all" standard.

Academic performance records indicate that while men and women entered the University of Pennsylvania Law School with very similar credentials, a pattern was firmly established during the first year of law school, and sustained for the next two years: men received higher grades than women on the average. In fact, men were three times more likely to be in the top ten percent of the first-year class than were women. This trend continued until graduation, at which time men held higher class ranks, enjoyed higher GPA's, received more honors from faculty, and won recognition for their participation on Law Review or in Moot Court competitions more frequently than feelings of alienation made them more interested in the subject matter; however, their general observations enriched the data. See id. at 47, 114–15 n.29.

See id. at 1. By "one-size-fits-all," Guinier refers to the uniformity of first-year law school classes as being large and predominantly taught by the Socratic method style, where students are encouraged to be adversarial and individual competition is high. See id. at 27–29. Other scholars have commented on the need to incorporate more diverse, creative learning styles into law school education in order to engage and include more students in classroom discussions. See Sturm, supra note 3, at 122 (stating similar conclusions).

Unfortunately, reported negative law school experiences appear to intensify for minority women, likely because they stand at the intersection of two marginalized groups. See GUINIER, supra note 1, at 51–52; Sturm, supra note 3, at 122–25.

See GUINIER, supra note 1, at 29, 58.

See id. at 59.

See id. at 36–37. Women entered University of Pennsylvania Law School with an undergraduate GPA of 3.52 and a mean LSAT of 40.87, while men had an average undergraduate GPA of 3.49 and mean LSAT of 40.98. See id.

See id. at 56–39. Table 2 and figures 1, 2, and 3 lay out the differences over three years. See id.

See id. at 28, 36–39.
women. Gender alone was the primary and most accurate predictor of class rank by the end of a student's third year.

Answers from the Bartow Survey, read in conjunction with qualitative data, demonstrate that women are failing to thrive in both formal and informal settings of law school. Women consistently reported higher levels of discomfort participating in traditionally large first-year classes than men, where professors predominantly taught by using the adversarial Socratic method. Moreover, Guinier's study concludes that women are less likely to speak in class, and do so for a shorter amount of time, than do their male counterparts. Women were also more likely to report that men enjoy greater peer tolerance of their class remarks, get more attention from faculty in class, and get more follow-up effort after class.

Part of the women's comparative silence during the formal classroom discussions and informal contacts with faculty was attributable to the adversarial, intimidating nature of the Socratic method. However, another reported factor in the women's choice not to engage in classroom discussion was the negative reception that women reportedly got from their peers while speaking and the failure of faculty to intervene.

Guinier also elicited law students' perceptions as to the "fairness" of male and female faculty to determine whether this affected classroom participation. Each sex seemed to feel that faculty members treat students of the same sex more favorably, but women felt the bias

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36 See Guinier, supra note 1, at 37, 41. Order of the Coif membership, editorial positions on law reviews, Moot Court finalists, and faculty-chosen awards are examples of awards given to men more frequently. See id. at 41.

37 See id. at 55. Perhaps the most disturbing component of Guinier's study was that male students and faculty members consistently hypothesized about factors other than law school itself to explain these gender differences. See id. at 54-55. Instead, the reasons most often cited for the implications of the data included gender tensions, reverse discrimination by women faculty, that the survey itself was biased, and a contention that women are paranoid. See id. at 55 tbl. 5.

38 See id. at 58, 62. By "formal," Guinier and her co-authors refer to the structured academic classroom setting replete with the Socratic method and performance based upon testing. See id. at 58. "Informal" refers to those situations in which students and faculty network with each other outside of the classroom setting, either through mentoring relationships or through other arrangements. See id. at 62.

39 See id. at 49-54, 58.

40 See id. at 43. Men are reportedly twice as likely to volunteer or answer questions in class. See id. at 130 n.86.

41 See Guinier, supra note 1, at 43.

42 See id. at 50.

43 See id. at 59. Women complained of laughter and disparaging remarks from peers. See id.

44 See id. at 43.
to a much stronger degree. Female students also placed a higher value on professors who “treat students with respect” than male students, which indicates their desire for more gender neutral treatment from faculty. Past studies have suggested that when women feel an atmosphere of mutual respect, the setting is conducive to broader participation.

Related to this disproportionately expressed desire for respect, Guinier argues that women need more “friendliness cues” from professors in a classroom’s formal context before approaching them after class. The Socratic method, however, is anything but friendly. As a result, mentoring relationships, which frequently equate with institutional success, are not being encouraged for female students at the University of Pennsylvania Law School because they internalize the aloof treatment more than male students. Because the Socratic method deters marginal groups from participating during class and from making informal mentoring connections outside of class, there is a potential correlation to weak performance during formalistic exam evaluations.

Differences in the survey responses between women in their first year and their third year bolster Guinier’s thesis that women are becoming more like their male counterparts during law school. Whereas first-year women rarely or infrequently participated in large group discussions and noticed sexist attitudes and comments in the classroom, these same women did not identify these attitudes and comments as problematic by their third year. Women grew more tolerant

45 See id. at 43-44.
46 See Guinier, supra note 1, at 44. Women and men both ranked “knowledge of subject matter” and “enthusiasm” as the top two most desirable characteristics in a professor. See id. 92% of the female students ranked “treats students with respect” at third, while this garnered a lower favorable response among male students. See id. One hypothesis is that male students already are accorded a higher degree of respect and, therefore, place lower value upon it. See id. at 44, 131 n.89.
47 See id. at 44, 131 n.89. See generally Carol Gilligan, In A Different Voice: Psychological Theory and Women’s Development (1982) (discussing different ways in which women perceive language as conversational and sharing rather than adversarial).
48 See Guinier, supra note 1, at 12, 59, 63. By “friendliness cues,” Guinier refers to friendly gestures and positive feedback given by professors that make students feel comfortable in contrast to aloofness or abrupt responses. See id. at 59.
49 See id. at 58-59.
50 See id. at 59, 62-66.
51 See id. at 59, 70.
52 See id. at 56.
53 See Guinier, supra note 1, at 56. 78% of first-year women reported sexist incidents in their
of comments or incidents that they labeled "sexist" during their first year.54 Another dramatic difference between first and third-year women was found in their responses to career plans.55 Nearly one-third of entering women had planned to enter public interest fields, but this number dropped to as low as eight percent by their third year.56 Meanwhile, white men consistently expressed minimal interest in public interest law, with high numbers of them preferring areas such as corporate law and litigation instead.57 Thus, by the third year of law school, some women grew to resemble their fellow male students rather than their first-year "selves."58

Conversely, the women who did not conform and "became gentlemen," because they offered alternative viewpoints in class, were less valued members of the law school community.59 Their opinions in class were reportedly not taken as seriously as those of white male students, and women who expressed alternative viewpoints were sometimes laughed at or called disparaging names alluding to sexual orientation.60 For example, female students reported that women who participated frequently in class were sometimes labeled as "feminazi dykes" or "lesbians" by their male classmates under their breath.61 In contrast, disparaging labels given to male students often struck at their behavior, not their personal characteristics as part of an outside community.62

C. Recommendations

Guinier offers several suggestions for institutional reform that will make law school more accessible to women and some minorities who are similarly alienated.63 First, Guinier would do away with the assumption that Socratic teaching should be the norm in first-year classes.64

comments section, but only 41% of those same women as third-year students made the same
remarks and observations. See id.

54 See id. at 45, 56.
55 See id. at 45.
56 See id. at 44–46, 134 n.102. Guinier also notes that part of the percentage drop may be
due to women recognizing the financial drawbacks of doing public interest work. See id. at 134
n.102.
57 See id. at 45–46.
58 See Guinier, supra note 1, at 46.
59 See id. at 53–54, 66–71, 137–38 n.120.
60 See id.
61 See id.
62 See id.
63 See Guinier, supra note 1, at 57–75.
64 See id. at 72–73.
Guinier suggests that law schools should develop and substitute a pluralistic learning environment which encourages a broader base of participation.65 For example, she advocates introducing more small group classes to the curriculum where people would be more comfortable sharing ideas.66 Additionally, Guinier recommends widening the focus of the curriculum from the argumentative, adversarial system to negotiations as an effective method of problem-solving.67 Finally, she urges law schools to structure the informal learning networks to encourage the formation and inclusion of more women and minorities in mentor relationships.68

Guinier devotes her closing chapter to a discussion of the need for more women, especially minority women, to become mentors for females in law school to facilitate this transformation of the institution.69 Indeed, she has preferred to view herself throughout her career as a mentor, rather than a role model, because of the interchange of ideas that a mentor shares with students and faculty colleagues.70 Guinier argues that the term “role model” implies only a representative “spokesmodel” of success for a subordinate community, and discounts the significant responsibility that women faculty have to nurture those communities.71 Faculty mentors will be key to helping female students to feel less excluded in the formal classroom setting and encouraging inclusion to informal settings.72

65 See id. Another of Guinier’s ideas to make large classes more inclusive is to adopt a Japanese teaching method whereby a teacher waits until about 75% of the class has raised its hand before choosing someone to respond. See id. But see John Yemma, Lawyers’ Adversarial Schooling Undergoes Cross-Examination, BOSTON GLOBE, May 3, 1997, at A1 (professors and deans from Boston area law schools report that teaching styles already do vary widely and that non-confrontational styles are as common as traditional Socratic ones).
66 See id. at 72-73.
67 See id. at 73. Rather than forego the adversarial approach altogether, Guinier would place a stronger emphasis upon other effective methods of legal problem solving encountered in daily practice. See id.
68 See id. at 74-75.
69 See id. at 85-97; see generally Lani Guinier, Of Gentlemen and Role Models, 6 BERKELEY WOMEN’S L.J. 93 (1991) (the last chapter originated in this law review article).
70 See GUINIER, supra note 1, at 90-95.
71 See id. at 94.
72 See id. at 29, 62-66.
II. Is It Equal Opportunity to Expect Students and Faculty to Conform to an “Objective” Standard?

A. Problems with Traditional Legal “Objectivity”

Guinier’s recommendations to transform legal institutions have drawn criticism and controversy. A contrary school of thought contends that law embraces objectivity and individuals, not communities. Many decry the accommodation of multiple perspectives into decision-making as losing sight of the fact that the law strives to apply to everyone equally. Defenders of the status quo feel that women are now entering law school at the same rate as men, and that equal opportunity of access to institutions ensures equality. If women cannot compete academically, that is a problem with the individuals, not the institutions.

Unfortunately, as Guinier’s empirical studies illustrate, sameness does not equate with fairness. For women, losing their voice by replacing emotions with an objective mask can negatively result in lower grades. This ultimately brings less economic and political status after graduation if women are not getting the same opportunities as those at the top of their classes. What critics fail to understand is that white males originally set the standards that have kept them secure for so long. Standards were never completely “objective” because they have only reflected society’s predominant viewpoint.

73 See generally Charles W. Collier, The New Logic of Affirmative Action, 45 DUKE L.J. 559 (1995) (arguing that affirmative action is nothing more than reverse discrimination against whites); Randall L. Kennedy, Racial Critiques of Legal Academia, 102 HARV. L. REV. 1745 (1989) (asserting that it is unfair for white academics to have less academic standing on minority issues); James Q. Wilson, The Case for Ending Racial Preferences, U.S. NEWS & WORLD REP., Dec. 23, 1996, at 31 (positing that using race as a “plus” factor to bar discrimination against Blacks invites discrimination against Asians and Caucasians).

74 See id. at 577–78; cf. Hirshman, supra note 16, at N31 (asserting that even if women perceive law school to be more difficult than men do, the difference between their average grades is so small as to be practically insignificant and will gradually improve as women adjust to the rigors of law school).

75 See Collier, supra note 73, at 572–73; Linda Chavez, Would-be Women Lawyers Need to Quit Looking for Excuses and Get with the Program, CHI. TRIB., Apr. 16, 1997, at N23 (stating that men may excel in law school because they are naturally more aggressive, emotionally detached, and quick-witted).

76 See Guinier, supra note 1, at 11–12.

77 See id. at 11–12, 53–54.

78 See id. at 67.

79 See id.
Furthermore, another University of Pennsylvania Law School professor, Susan Sturm, has analogized that women and minorities are like the “miner’s canary” of American society.81 Their failure to thrive in a particular institution usually indicates a more systemic problem that could be affecting the main group.82 In fact, even the American Bar Association (ABA) has acted upon the gravity of the gender stratification within legal education.83 The ABA’s Commission on Women in the Profession recently published their own version of the depressing phenomenon in Elusive Equality: The Experiences of Women in Legal Education.84

Guinier is not alone in her concern over women students being silenced and alienated in law school. Reports of alienation, as Guinier accurately points out, are symptoms of a deeper problem of disillusionment within the legal system.85 At a time when the legal profession is suffering from an internal crisis and facing negative public opinion,86 new ideas are welcomed. The time is ripe for law schools to begin incorporating their female and minority students’ perspectives on legal analysis, interpretation, and teaching of the curriculum to check this trend of disillusionment with the legal system.87

B. Benefits of Seeking-Out the Voices of Women Faculty and Marginal Groups in Law School Faculties

Guinier’s suggestion to nurture mentoring relationships with women and minority faculty adds to the rich background of work that exists on the benefits to be derived from having women and minority faculty members in our nation’s law schools.88 The danger of forcing

81 See Sturm, supra note 3, at 126 & n.37.
82 See id.
83 See A.B.A. COMMISSION ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (Jan. 1996) [hereinafter ELUSIVE EQUALITY].
84 See id.
85 See Guinier, supra note 1, at 76; see also Sturm, supra note 3, at 132. “[A] legal education that trains lawyers to be only one way—aggressive and quick-witted—is bad not only for women and minorities but for white men. It creates argumentative lawyers that the general public loathes.” Yemma, supra note 65, at A1.
86 See Sturm, supra note 3, at 126–34.
87 See Guinier, supra note 1, at 76–77.
their unique voices to fit an objective law school standard of teaching is to deny the benefits of diversity. 89

1. Multiple Consciousness

Legal scholar Mari Matsuda has spoken of a “multiple consciousness” shared by historically marginalized groups. 90 This is the ability that women and minorities in our patriarchal society have to shift their thinking from the predominantly white male perspective that dominates the legal profession to the perspectives they have gained from their personal experiences. 91 Multiple consciousness is valuable because it gives a lawyer greater resources to draw upon when solving problems for clients. 92 Guinier’s argument that women and minorities perform more successfully in small groups, where collaborating and negotiating are valued more than adversariness, reflects the concept of multiple consciousness. 93

Female faculty members, who often inherently possess this multiple consciousness, are going to be an essential component for the restructuring of legal institutions. 94 Their insights derived from multiple consciousness should be incorporated more effectively into law schools because it ultimately benefits society as a whole when their students have clients of their own. 95

2. CommunityEmpowerment

A cultural pluralist argument is frequently advanced for the hiring of women and minority faculty members. 96 Harvard Law School professor Duncan Kennedy feels that the presence of minority faculty members is not only desirable for the fulfillment of individual opportunities, but is necessary for the empowerment of subordinate commu-

89 See Guinier, supra note 1, at 75–77, 97.
90 See Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness in Jurisprudential Method, 11 Women’s Rts. L. Rep. 7, 9 (1989) [hereinafter When the First Quail Calls]; see also Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323, 335 (1988) (identifying the special voice and perspective of those who have experienced discrimination and urging the need for the incorporation of that perspective to legal studies).
91 See Matsuda, When the First Quail Calls, supra note 90, at 9.
92 See id.
93 See Guinier, supra note 1, at 73–74, 97.
94 See id. at 97.
95 See id.
96 See Kennedy, supra note 88, at 712–37.
nities. Although he focuses primarily on racial minority communities, Professor Kennedy acknowledges that his arguments can be analogized to women as a subordinate community. Any subordinate community needs its own intelligentsia to produce the political or ideological knowledge that will help to raise the community out of its subordinate status. When a law school distributes faculty positions, it is not merely allocating wealth and the power to participate in politics, it is determining who should be allowed to influence the future. In order to have legal institutions reflect our democratic society, women and minorities need to be able to contribute effectively to the production of knowledge and distribution of benefits within academia.

Echoing arguments based on multiple consciousness, the inclusion of more women and minority faculty members for cultural pluralist reasons would benefit society as a whole, not just the communities of which these faculty members are a part. Faculty members representing disempowered communities would challenge traditional law school pedagogy by drawing upon issues important to their communities or experiences, and this would ultimately improve white male scholarship by challenging them to analyze previously unrecognized issues.

III. AFFIRMATIVE ACTION FOR WOMEN FACULTY IS A NECESSARY CATALYST FOR GUINIER’S PROPOSED INSTITUTIONAL CHANGES

A. Why More Women Faculty Are Needed—A Telling Portrait from the Numbers

There has long been a shortage of women law school faculty members in relation to their overall presence in the legal profession.

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97 See id. at 713–14, 726.
98 See id.
99 See id. at 726.
100 See id. at 714.
101 See Kennedy, supra note 88, at 713–14, 726.
102 See id. at 730–31.
103 See id.
104 See generally Marina Angel, Women in Legal Education: What it’s Like to be Part of a Perpetual First Wave or the Case of the Disappearing Women, 61 TEMP. L. REV. 799 (1988) (using personal experiences of the author to illustrate the discrimination faced by women law school faculty); Richard Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. PA. L. REV. 537 (1988) (examining how law schools fail to recruit and retain women and minority faculty members in comparison to white male faculty members); Deborah Jones Merritt & Barbara F. Reskin, Sex, Race, and Credentials: The Truth about Affirmative
This underrepresentation of women on law school faculties continues despite studies which have shown that the academic records of women applicants are at least as good as those of their male competitors, and despite the existence of affirmative action policies at law schools that target women and minorities.105

The women who actually do hold faculty positions have a second-class status in comparison to their male colleagues.106 For example, when comparing a man and a woman with identical credentials at the time they are beginning their teaching career, a woman is more likely to have begun her academic career at a lower initial rank,107 to have taught a less prestigious course,108 and to have been appointed to a tenured position at a slower rate.109 These factors perpetuate a cycle that prevents women in academia from attaining tenured faculty positions.110 Tenure confers the power to vote with more weight at faculty meetings.111 Obviously, tenured women faculty can better support their preferred candidates than women without tenure.112

It appears that, in accordance with Guinier’s findings on the alienation of female law students, informal networking among male faculty members perpetuates the isolation of women as they try to attain coveted faculty positions.113 For example, a common assumption is that women faculty members may choose to put geographic con-

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105 See Sex, Race, and Credentials, supra note 104, at 208-09; Angel, supra note 104, at 834.
106 See Sex, Race, and Credentials, supra note 104, at 205-06; Angel, supra note 104, at 801-05.
107 See Sex, Race, and Credentials, supra note 104, at 252-54.
108 See id. at 216-20, 258-59.
109 See id. at 205-06, 230. According to their study of all 1,100 professors who began their first tenure-track position at an accredited U.S. law school between the fall of 1986 and the spring of 1991, white men received 55.1% of the tenure-track posts. See id. at 230. Minority men and white women began teaching at significantly more prestigious schools than did white men with identical credentials—the one benefit conferred. See id. at 250. However, even at these institutions, men were much more likely than women to start teaching at the associate or full professor rank. See id. at 252. Men were also more likely than women to be teaching high-status classes with many publishing opportunities like constitutional law, while women were significantly more likely to be teaching family law, trusts and estates, or skills courses. See id. at 258-59. Rather than being perceived as desirable teaching assignments, these classes are usually reserved for faculty with weaker credentials and lower status. See id. at 216-20.
110 See id. at 205-06, 230.
111 See Angel, supra note 104, at 830-36.
112 See id.
113 See Sex, Race, and Credentials, supra note 104, at 250-52; see also Paula Dressel et al., The Dynamics of Homosocial Reproduction in Academic Institutions, 2 Am. U. J. GENDER & L. 37, 52-54 (1994); Martha S. West, Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty, 67 Temp. L. Rev. 67, 86-92 (1994).
straints on job searches or prioritize family commitments more than men.\textsuperscript{114} Yet, when studies have singled out these factors to try to explain the disparity in tenure appointments at prestigious schools, they have been shown to be relatively insignificant.\textsuperscript{115}

On the other hand, a recent study indicated that certain subjective factors such as personal references, alumni status, or interview skills may be the determinant in hiring and receiving tenure.\textsuperscript{116} One academic found that in her personal experiences, "collegiality" is an important criterion for tenure appointments, although it is not formally listed.\textsuperscript{117} Collegiality refers to how well one fits in with the (predominantly male) faculty and how much one is liked.\textsuperscript{118} Building on Guinier's findings, if women vying for faculty positions were alienated when they were students, this same alienation and non-acceptance by peers and faculty could possibly inhibit their later job searches.\textsuperscript{119}

Contrary to the myth that minority women receive the greatest benefits from affirmative action programs, minority women actually encounter an intensification of this general pattern of alienation.\textsuperscript{120} Indeed, their race and sex combined seem to cancel any advantage conferred by having just one of the characteristics.\textsuperscript{121} This appears to parallel the increased alienation reported by minority women students in Guinier's study.\textsuperscript{122}

\textsuperscript{114} See Deborah J. Merritt et al., \textit{Family, Place, and Career: The Gender Paradox in Law School Hiring}, 1993 Wisc. L. Rev. 395, 396 (Mar./Apr. 1993) [hereinafter \textit{Family, Place, and Career}]. In fact, the authors of this study discovered that when white men put a geographic constraint on their job search, the prestige of the institution where they receive an appointment is, surprisingly, enhanced. See \textit{id.} at 397, 434.

\textsuperscript{115} See \textit{id.} at 438–41. The data from this study suggested that the distribution of tenure-track women at American law schools was not related to the presence of a partner or children. See \textit{id.} at 441.

\textsuperscript{116} See \textit{id.} at 228–29, 244. The authors referred to the favoring of alumni as conferring an "inbred status" on those applicants. See \textit{id.} at 243–44.

\textsuperscript{117} See Angel, supra note 104, at 830–31.

\textsuperscript{118} See \textit{id.}

\textsuperscript{119} See Sex, Race, and Credentials, supra note 104, at 228–29, 243–44; see also Angel, supra note 104, at 830–31.

\textsuperscript{120} See Sturm, supra note 3, at 205; Deborah J. Merritt & Barbara F. Reskin, \textit{The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women}, 65 S. Cal. L. Rev. 2299, 2347–49, 2356 (1992) [hereinafter \textit{The Double Minority}]; see also Sex, Race, and Credentials, supra note 104, at 221.

\textsuperscript{121} See Sex, Race, and Credentials, supra note 104, at 199, 205, 251, 275.

\textsuperscript{122} See Guinier, supra note 1, at 51–52.
B. Impact of This General Underrepresentation on Current Women Faculty

Too often, the smaller numbers of women tenure-track professors mean that they have to allocate their time more than their male colleagues. For example, the American Bar Association Commission on Women in the Profession found that female professors are expected to divide their time between teaching a full course load, mentoring students, and serving committee assignments in a manner disproportionate to that required of their male counterparts. These extra responsibilities translate into less time available to devote to scholarship, a necessity for those who need publishable materials when the time for tenure appointments arrives. Thus, while women faculty members may be present, they are prevented from being fully academically effective due to the disproportionate demands on their time.

Not only does the small number of female tenure-track professors cause them to be chronically overextended, it perpetuates a perception of them as “tokens.” When women are not allowed to be present beyond a “critical mass” number, they appear and self-identify as role models rather than mentors. As previously mentioned, the problem with being held up as a role model is that one is identified as being part of, and dependent upon, the institution that placed them there rather than someone with an interactive role. A perception that male professors command more respect in the classroom than women is, sadly, not exclusive to the University of Pennsylvania Law School.

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123 See ELUSIVE EQUALITY, supra note 83, at 27.
124 See id. The need for a female perspective on committees, and the smaller numbers of women professors available to fill those spaces, means that women bear a heavier burden of committee assignments. See id.
125 See id. Women are significantly less likely to be appointed to tenure-track positions when they begin their careers—30% compared to 43% for men. See Sex, Race, and Credentials, supra note 104, at 252. Therefore, having enough time for adequate, meaningful scholarship is all the more critical for women faculty. See id.
126 See ELUSIVE EQUALITY, supra note 83, at 27.
128 See John E. Morris, Boalt Hall’s Affirmative Action Dilemma, AM. LAW., Nov. 1997, at 4. A 1993 Boalt Hall faculty-student-alumni committee concluded that it is essential to have a certain number of minority students to prevent their alienation within overwhelmingly white institutions. See id.
129 See GUINIER, supra note 1, at 65.
130 See id.
131 See Farley, supra note 127, at 336–42 (author’s study of a top-ten school confirmed the
Therefore, until the number of female faculty members is more proportional to the number of women whom they teach, female professors will carry heavier burdens than male faculty members. Additionally, female faculty members will continue to have a more difficult time proving themselves in front of students when it appears that they are filling a "token" position. Women faculty members are being alienated and marginalized more than their female students due to the disparate rates of tenure track appointments and subsequent difficulty in legitimizing their presence.

C. Impact upon Female Students due to the Lack of Women Faculty in Law Schools

Yet another benefit of increasing the presence of women faculty members is to encourage their roles as facilitators of mentoring relationships with students. As previously mentioned, female students are more successful within institutional settings if they have a mentor. And, as Guinier reminds her readers, professors tend to mentor "those we know or who remind us of who we once were." Guinier's research corroborates the argument that fostering mentor relationships between students and faculty in informal situations leads to subsequent student success in the formal evaluation settings of law school. Both women (and men) view female professors as approachable outside of the formal classroom setting, but women are especially likely to seek out other women for support. Therefore, part of the alienation that women students feel within law school can possibly be countered by more opportunities for interaction with female faculty.

See generally Farley, supra note 127 (commenting that women faculty in tenured positions have difficulty gaining the same level of acceptance among students that male faculty enjoy); Angel, supra note 104 (describing similar difficulties that women faculty at law schools experience).

See Guinier, supra note 1, at 66.

See id. at 63, 66; see also Hirshman, supra note 16, at N31 (conceding that female law students are on law reviews more often at institutions where women compose 20% or more of the tenured faculty).
The presence of more women and minority professors could also aid in breaking the barrier to participation that female students reported in formal classroom settings.141 Female students are, impliedly, more likely to volunteer for a female professor than in a discussion led by a male professor because there is a perceived atmosphere of mutual respect.142 A higher rate of volunteerism would potentially instill more self-confidence in female students, which could translate into higher test scores and class ranks.143 Furthermore, the presence of more female professors could lead to an increased number of female recipients of graduation honors based on subjective professorial recommendations.144

D. Mentoring Relationships Between Women Faculty and Students Should Be Part of Dialogues That Will Transform Law Schools to Prevent Alienation

Prioritizing the placement of female faculty offers female students the potential for increased success in the formal and informal settings of the present law school structure.145 This supports the necessity of adding more women faculty to the ranks.146 In addition, there are other substantial benefits to be derived from these mentoring relationships.147

If more women faculty members are in a position to set and maintain the law school agenda, the chance to change the traditional standards will be taken more seriously.148 Through their mentoring relationships, women faculty will be able to work with both marginal groups and white male students to discover the most effective solution.

141 See id. at 91-92. Guinier suggests that when professors teach by means of an interactive, communicative discourse, an atmosphere of mutual respect is established. See id. This, in turn, may make women students more self-confident and increase their classroom participation. See id. Furthermore, women and/or minority professors may see from their own outsider consciousness that women and minority students do not respond well to teaching by traditional law school methods and would, therefore, be most likely to implement new methods. See id.

142 See GUINIER, supra note 1, at 91-92.

143 See id.

144 Cf. id. at 41-42 (if male students receive more honors from male faculty, the converse situation may be true that female students will receive more honors from female faculty).

145 See GUINIER, supra note 1, at 58, 62.

146 See id. at 77. However, Guinier advocates doing more than simply increasing the numbers of women, as evidenced by her broad, institutional reform suggestions. See supra notes 63-68 and accompanying text.

147 See infra notes 148-49 and accompanying text.

148 See FARLEY, supra note 127, at 333-35.
to the problem of disproportionate and inadequate academic success. However, the bottom line is that there must be more women faculty members present to introduce these changes.

E. Indications That Aggressive Affirmative Action Can Fulfill Its Promises

The promised benefits of proportional numbers of women and minority faculty has already been realized in practice. Chapman University in California recently opened its own law school with the intent of incorporating many of the suggested changes in the traditional pedagogy. As one component of their plan, Chapman conscientiously chose a diverse full-time teaching faculty of nine professors. Four of these professors were women and three were minorities. Furthermore, Chapman’s five administrators, three of whom were women, also held faculty status.

Results gathered from a survey of Chapman’s first-year students prove promising for law schools that would similarly model themselves in the future. In contrast to studies that have documented the negative toll on marginal groups in law school, women and minority students at Chapman participated much more frequently during their first-year courses. In addition, women had a higher average GPA and class rank at the end of the first year than did their counterparts at other law schools. Both male and female students reported that they

149 See Guinier, supra note 1, at 66, 95–97.
150 See Judith D. Fischer, Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students, 7 UCLA WOMEN’S L.J. 81, 82–83 (1996); see also Guinier, supra note 1, at 73. The University of Oregon Law School has also attempted to implement these ideas. See Guinier, supra note 1, at 73.
151 See Fischer, supra note 150, at 83–84. But see Chavez, supra note 76, at N23 (noting the realistic obstacle law school’s face in making Guinier’s proposed changes: “[W]ho would attend law schools that abandoned the highly competitive atmosphere present in today’s best law school classrooms? And, more importantly, who would hire graduates of these new, more sensitive law schools? Certainly not the nation’s top law firms.”) Id.
152 See Fischer, supra note 150, at 95.
153 See id. The minority composition is as follows: one African-American, one Asian-Indian, and one Chilean. See id.
154 See id.
155 See id. at 114–15.
156 See id. at 99–100.
157 See Fischer, supra note 150, at 105. After the first year, women’s average class rank based on grades was equivalent to a 92, while men’s average class rank based on grades was equal to 105. See id. The top 10% of the class was comprised of 12 women and 8 men. See id.
felt that they had female role models in contrast to previous studies that complained of a lack of elite women.158

While this data was based only upon students' first-year performances and experiences, Chapman's experiment suggests that taking measures to prevent feelings of alienation has a positive impact on women and minority student groups.159 The results revealed that a more diverse faculty indeed prevented possible feelings of alienation and poor academic performance for female students.160

IV. Study Comes at a Crucial Time When Trend Is Against Affirmative Action

Law schools, in particular, are at the focal point of many recent controversies surrounding affirmative action.161 The Fifth Circuit's decision to uphold Hopwood v. Texas162 re-ignited the present debate over the appropriate role of affirmative action in educational institutions. The plaintiffs of this nationally followed case successfully challenged the admission of certain Black and Mexican-American students into the University of Texas Law School as an unconstitutional racial classification.163 Consequently, law schools and universities across the country have been scrambling to defend their own admission policies against future legal challenges.164

158 See id. at 111.
159 See id. at 114-15.
160 See id. at 111.
162 See Hopwood v. Texas, 78 F.3d 932 (5th Cir. 1996).
163 See Hopwood, 78 F.3d at 932-34.
164 See Lincoln Caplan et al., The Hopwood Effect Kicks In On Campus, U.S. NEWS & WORLD REP., Dec. 23, 1996, at 26. The "Hopwood effect" is compared to water ripples that are killing or modifying affirmative action at one institution of higher education after another. See id. In Georgia, the Attorney General asked its university system to treat the ruling as precedent and end all racially-based admission and financial aid programs at the state's thirty-four campuses. See id. Arkansas and Wisconsin are presently re-examining their own admissions policies. See id. Despite dismantling its admissions policy in an attempt to avoid threatened court challenges, the University of Washington Law School is now facing a class-action lawsuit on behalf of white plaintiffs who claim that they were denied admission because of their race. See Marsha King, Who Gets In? UW Reinvents Rules—New Admissions System Changes Way Race is Treated, But Aims to Preserve Diversity, SEATTLE TIMES, Oct. 12, 1997, at A1; Marsha King, UW Reverse-Bias Case Becoming Class-Action Suit, SEATTLE TIMES, May 30, 1997, at B3. The University of Michigan is facing a similar legal challenge to its own admissions policy. See Rusty Hoover, UM Admission Fight Costly. University Says Defense of Affirmative Action Policy is Worth $1 Million to $3 Million. Critics Call it Waste, DETROIT NEWS, Oct. 30, 1997, at A1.
Specifically, the Fifth Circuit held in *Hopwood* that the promotion of diversity is not a compelling state interest. In so doing, the court rejected Justice Powell's rationale from *Bakke v. Board of Regents of University of California*, the 1978 landmark case that originally validated a state's interest in fostering diversity in an educational context. Justice Powell's opinion that diversity contributes to academic freedom by introducing a number of viewpoints to the "robust exchange of ideas" was reasoned as inapplicable by the *Hopwood* court because it merely represented the "swing vote," not the majority. In contrast to Justice Powell's praise of diversity, the *Hopwood* court condemned affirmative action policies which purport to promote diversity as "racial social engineering." Now, the only state interest remaining to justify racial classifications in the Fifth Circuit is the remediation of past wrongs.

While the holding of *Hopwood* applied solely to admission policies of academic institutions, the reasoning of that court could conceivably challenge hiring policies of those institutions in the near future as well. It is especially foreseeable because many of the justifications used to recruit women faculty members have the same line of reasoning as promoting diversity among students.

Guinier's *Becoming Gentlemen* arrives at a critical time to help undermine the increasingly held assumption that affirmative action

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165 See *Hopwood*, 78 F.3d at 941-44.
166 See 438 U.S. 265, 311-15 (1978) (Powell, J., plurality opinion); *Hopwood*, 78 F.3d at 944.
167 See *Bakke*, 438 U.S. at 313.
168 See *Hopwood*, 78 F.3d at 942.
169 See *Bakke*, 438 U.S. at 311-15. Justice Powell recognized that "... the nation's future depends upon leaders 'trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples." *Id.* at 912-13.
170 See *Hopwood*, 78 F.3d at 951. Moreover, using particularly strong language the court asserted, "Diversity fosters, rather than minimizes, the use of race. It treats minorities as a group, rather than as individuals ... To believe that a person's race controls his point of view is to stereotype him." *Id.* at 945.
171 See *id*. at 944, 952.
172 See *id*. at 934, 945-46.
173 See *Bakke*, 438 U.S. at 311-15 (describing benefits of diverse viewpoints at institutions of higher education); Kennedy, *supra* note 88, at 711-13 (advocating use of race as a "plus factor" in hiring legal academics in order to achieve diversity and its attendant benefits).

In fact, a public school's decision to consider race in deciding which of two equally qualified teachers to lay off, in order to promote diversity among faculty, has already been challenged. See *Taxman v. Board of Educ. of Piscataway*, 91 F.3d 1547, 1549-50 (3rd Cir. 1996). This case settled before the Supreme Court had a chance to clarify its position on the constitutionality of using racial or cultural diversity as a "plus" factor. See Abby Goodnough, *Financial Details Are Revealed in Affirmative Action Settlement*, N.Y. TIMES, Dec. 6, 1997, at B5.
is a "spoils system"174 which works to the advantage of traditional outsiders. Guinier concludes that diversity still has an important, identifiable benefit in higher education.175 The reported alienation and lower academic performance of women and minorities in Guinier's study176 provides a persuasive argument that the remediation of past wrongs is far from over. There is a danger that such isolation will continue unless diverse viewpoints are welcomed and included by legal institutions.177 The benefit of correcting the past wrongs of a system that is uniform and alienating to women would suggest mentoring to be a legitimate justification for affirmative action in faculty hiring.178 At a minimum, then, diversity should be used to justify affirmative action as part of the remediation of past wrongs until the numbers of women and minority faculty begin to correlate with the student population as a whole, and women students achieve equal success.179

V. Conclusion

Lani Guinier's Becoming Gentlemen is significant in creating awareness that equality for women and minority law students is far from a reality. Her findings illustrate that the same treatment does not lead to equal rates of academic success or status among peers. However, just as the "miner's canary" is a metaphor for women in the classroom, it also applies to women in law school as professors. Achieving equal access in legal academia for women cannot be limited to securing seats in the classroom. They need to be behind the lecterns, voting at the tenure meetings, and teaching the prominent courses in order to show that equal access for all women in the law schools has truly been accomplished. Only when this "first-generation" of entry access for women faculty catches up to the numbers of female students will the other systemic changes that Guinier proscribes be meaningful and effective.

In order to truly make the law school environment more diverse and inclusive, more diverse viewpoints need to be part of that transfor-

174 See Sex, Race, and Credentials, supra note 104, at 203 (using term "spoils system" to describe sentiments towards affirmative action).
175 See Guinier, supra note 1, at 66–77, 85–97, 100–01.
176 See id. at 57–71.
177 See id.
178 See id. at 66.
179 Cf. Hopwood v. Texas, 78 F.3d 932, 945 (5th Cir. 1996) (the sole remaining justification for racial consideration is the remediation of past wrongs done to a particular minority group by a particular state institution).
mation dialogue in significant numbers. Increased numbers of diverse law school faculty members will allow more time and opportunities for mentoring relationships, which will inspire traditional outsider groups to regain their voices and to resist "becoming gentlemen."

Therefore, although Guinier's book discusses changes for the future beyond adding more women to the equation, it is clear that more women and minority professors need to enter the academic world so that students will receive the message that they are truly valued for more than just their token numbers, or presence as role models. Affirmative action is needed to create more visible, prominent positions for women faculty who will then be able to facilitate the debated systemic changes. Only when the institutions end the alienation of women on their faculty can efforts to curb the alienation of students be a reality.