

# ROOMS OF THEIR OWN: AN EMPIRICAL STUDY OF OCCUPATIONAL SEGREGATION BY GENDER AMONG LAW PROFESSORS

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Today, as throughout history, men primarily do men's work while women do women's work. Even in highly industrialized countries, where women have entered many traditionally male occupations, gender still defines most jobs.<sup>1</sup> Nurses and secretaries, for example, perform "female" jobs whereas roughnecks (off-shore oil rig workers) and airline pilots perform "male" ones. When an occupation becomes gender-integrated as a whole, stratification by gender still frequently exists within the occupation, with women typically holding lower positions. The legal field conforms to this pattern. Women's successful access to the law profession over the past several decades has not been accompanied by equal success in their progression within the profession.<sup>2</sup> Compared to similarly qualified male lawyers, female lawyers as a group earn less money, are promoted less frequently, occupy fewer positions of power, and tend to practice in less prestigious areas of the law. If the legal profession is conceptualized as a building, women have stepped over the threshold and entered the building, but often occupy (lesser) rooms of their own.<sup>3</sup>

Gender segregation exists even in the legal academy, where one might expect—and certainly hope—to find more integration than found elsewhere. Many commentators have noted that although women now comprise

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\* Professor of Law, Tulane Law School. © Marjorie E. Kornhauser, 2003. This article, more than others, depended on the kindness of others. Essential statistical work was performed by Rick White of the AALS, who gathered the data, two graduate students—Jean Haubert and Barbara Stroope—who performed the necessary statistical analyses, and Professor April Brayfield for general statistical advice. Thanks to Professors Aden Addis, Deborah Jones Merritt, Jonathan Nash, and Dan Schneider for many helpful suggestions throughout the course of the research and writing of this Article, to Nancy Levit for her encouragement and advice, and to Jean Haubert for assistance in preparing the Appendices.

<sup>1</sup> See, e.g., RICHARD ANKER, GENDER AND JOBS: Sex SEGREGATION OF OCCUPATIONS IN THE WORLD 407 (1998). Slightly more than one-half of the United States non-agricultural labor force is segregated into occupations where 80% of the work force is either male or 80% female. *Id.* See also *infra* Subpart IIIA for a discussion of occupational segregation by gender.

<sup>2</sup> See, e.g., Deborah L. Rhode, *Mid Course Corrections: Women in Legal Education* 53 J. LEGAL EDUC. 475 (2003); DEBORAH L. RHODE, ABA COMMISSION ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 5 (2001). See also, e.g., VIRGINIA VALLAN, WHY SO SLOW? THE ADVANCEMENT OF WOMEN 198-208 (1998). See generally Symposium, *Taking Stock: Women of All colors in Legal Education*, 53 J. LEGAL EDUC. 467 (2003). For a quick summary of the success of women law professors, see Deborah Jones Merritt, *Are Women Stuck on the Academic Ladder? An Empirical Perspective*, 10 UCLA WOMEN'S L. J. 249 (2000); *infra* note 5 for longer articles. See also Fiona M. Kay, *Flight from Law: A Competing Risks Model of Departures from Law Firms*, 31 LAW & SOC'Y REV. 301, 304 (1997). See *infra* Part IIA for a discussion of occupational segregation by gender.

<sup>3</sup> Presumably these were not the types of rooms envisioned by Virginia Woolf who both condemned the automatic disparagement of women's topics and argued that the true genius is more androgynous, having both male and female attributes. VIRGINIA WOOLF, A ROOM OF ONE'S OWN 128-29, 170-71, 181-88 (1929).

approximately half the law school student body, women students often face a more hostile environment and under-perform when compared to similarly qualified male students.<sup>4</sup> Similarly, although the number of women law professors has greatly increased over the past three decades, women are still underrepresented on faculties and disproportionately hold less prestigious and non-tenured positions such as librarians, clinicians, and legal research and writing instructors.<sup>5</sup> Within tenure track positions women have made great strides but disturbing inequalities remain. For example, women are underrepresented as deans,<sup>6</sup> hired at lower ranks than men,<sup>7</sup> and gain tenure at a lower rate than men do.<sup>8</sup>

The effects of this gender segregation are felt not just within law schools but also far beyond the institutions' walls. Marginalizing women professors sends a message to both male and female law students that affects students'

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<sup>4</sup> See, e.g., LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997). See also Paula Gaber, "Just Trying to Be Human in This Place": *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988) (two articles written ten years apart, describing the alienation of and difficulties encountered by women law students at Yale, show the persistence of problems for female law students).

<sup>5</sup> See generally Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775 (2001); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997); Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313 (2000); Rhode, *supra* note 2, at 27; Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law Schools' Dirty Little Secrets*, 16 BERKELEY WOMEN'S L.J. 1 (2001). The paucity of female law faculty has long been recognized and studied. See, e.g., Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988); 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).

<sup>6</sup> See, e.g., Neumann, *supra* note 5, at 323-24.

<sup>7</sup> See Merritt & Reskin, *supra* note 5, at 205.

<sup>8</sup> See Neumann, *supra* note 5, at 336; Angel, *supra* note 5, at 799, 840. Whether men are published and/or cited more than women in elite law reviews is unclear. See, e.g., Deborah Jones Merritt, *Scholarly Influence in a Diverse Legal Academy: Race, Sex, and Citation Counts*, 29 J. LEGAL STUD. 345 (2000) (finding that after controlling for various factors, such as prestige of the author's institution, subject matter and educational background, women's scholarship is cited as often as white males' publications). See also Ian Ayres & Fredrick E. Vars, *Determinants of Citations to Articles in Elite Law Reviews*, 29 J. LEGAL STUD. 427, 444 (2000) (finding that articles by women were cited more). Of course, controlling for factors such as where a professor teaches ignores the existence of much gender discrimination. Women, for example, teach at less prestigious schools and are therefore more likely to write in less prestigious—and less published—areas. Merritt & Reskin, *supra* note 5, at 237 (discussing a study demonstrating that women are over-represented in less prestigious subject areas). See also Marjorie E. Kornhauser, *Moving the Margins: Assimilation and Enduring Marginality: Why a Duck? Are Feminist Legal Journals an Endangered Species, and if so, Are They Worth Saving?* 12 COLUM. J. GENDER & L. 478 (2003) (articles on law and economics are published more than feminist articles in top journals).

attitudes towards (and success in) law school and the legal profession. Moreover, the concentration of women in less prestigious areas of the law distorts the development of the law itself. As long as men and women inhabit unequal positions within the law, there cannot be the free exchange of ideas among equals that allows the law to develop most fully. The significant consequences of gender segregation within the legal academy make it essential that the segregation be eliminated. The first step toward that goal is to fully identify the ways in which the segregation manifests itself.

This Article contributes to the goal of identifying gender segregation by empirically examining one aspect within law schools that has not previously been extensively explored: the courses that men and women teach. In their totality, the findings of this thirteen-year longitudinal study of courses listed by the Association of American Law Schools (“AALS”) indicate that occupational segregation by gender in law schools is widespread and growing. This is contrary to what might be expected since the proportion of women law professors during this time period increased by nearly 50%, and, all things being equal, this growth should narrow—not widen—gender ratios. The instances of course segregation by gender, found by earlier, less comprehensive studies of this area, are not anomalies. Alas, law schools are no different than the majority of other occupations: job segregation by gender is the rule, not the exception. In fact, the increased proportion of women law professors has been accompanied by an increased identification of courses as male or female courses. This suggests that in law, as in other occupational areas, there is a trend towards re-segregation, not of the entire field, but by stratification of specialties with women in the less prestigious areas.

The study reaches six major conclusions: First, the proportion of women to men law professors teaching the majority of courses listed by the AALS does not reflect the gender composition that would occur randomly. Rather, almost 80% of the courses have a *gender disparity*, defined as a statistically significant gender distortion. A *gender distortion* is a disproportionate number of men or women teaching the subject as compared to the gender composition of all law school professors.<sup>9</sup>

Second, despite a large increase in the overall proportion (or percentage) of female law professors during the time span investigated, the number of courses with a gender disparity increased by more than 20%. This is contrary to the logical assumption that, all things being equal, gender disparity would narrow as the proportion of female professors approached parity with male professors.

Third, over the same time period more than 20% of the courses showed a statistically significant increase in the *gender distortion* (that is the amount of

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<sup>9</sup> A course with a statistically significant over-representation of women is labeled a “female disparity” while one with a statistically significant over-representation of men is labeled a “male disparity.” Some courses had too few professors teaching them to be statistically analyzed, as described more fully in notes and accompanying text. Consequently, as described *infra* at note 26 and accompanying text, only 90% to 95% of the courses listed by the AALS, depending on the test and year involved, are included in these statistics.

variation from the overall proportion of women teaching law). In contrast, only 5% of the courses experienced a statistically significant decrease. Again, this is contrary to logical expectations given the increased proportion of women teaching law.

Fourth, courses that have a gender disparity generally have a *gender identity*, that is, they have characteristics that are commonly recognized as either traditionally “male” or traditionally “female.”

Fifth, many courses that experienced a statistically significant change in the gender distortion tended to be courses that had, over time, experienced some change in gender traits, such as a change in prestige, thus altering the gender identity.

Sixth, widening gender distortions suggest that for many courses gender identity intensifies over time and may lead to gender re-segregation.

Part I of this Article presents the empirical evidence regarding gender distribution of law professors by courses taught, starting with the 1990-1991 academic year and ending with the 2002-2003 academic year. Subpart IA summarizes prior studies in the area, Subpart IB describes the methodology used and Subpart IC presents and discusses the results. The data shows that although the number of women professors at American law schools has increased, the gender divide, already present in 1990-1991, has also increased. Part II places the results in the larger context of occupational segregation by gender, using the findings in Part I as examples. Specifically, Subpart IIA briefly describes research on occupational segregation by gender, focusing on the gender stratification that occurs when women enter into a field. Subpart IIB discusses some subtle, largely unconscious causes of gender disparity, focusing on two related cognitive processes—gender schemas and stereotype threat. The Article’s conclusion summarizes the basic results and urges law schools to make concerted efforts to more evenly distribute courses between male and female professors. Ending gender segregation in this area will ultimately benefit the development of the law itself as well as all those engaged in the legal profession.

## **I. THE STUDY: A LONGITUDINAL ANALYSIS OF THE DISTRIBUTION BY GENDER OF LAW PROFESSORS ACCORDING TO COURSES TAUGHT.**

### **A. Prior Studies**

Although many scholars have noted the existence of gender segregation among law professors, none have concentrated on the topic of segregation of courses by gender. Either the discussion of courses has been a small portion of a broader examination of women or women faculty in law schools, or it has concentrated on a particular category of courses taught. Most commonly, such articles focused on women in the non-tenure track, low status fields, such as libraries, legal research and clinical courses, or on tenure track hiring patterns generally. To the extent that these studies have more broadly examined gender composition of courses taught, they have noticed many inequities. Women, for example, disproportionately teach skills courses and courses relating to families,

teach gender and law courses almost exclusively, and also are concentrated in the less prestigious estates and trust courses, while men with equal backgrounds disproportionately teach the high status constitutional law courses.<sup>10</sup> The “pink ghetto” phenomenon in legal research and writing courses, which often include courses such as Legal Method, Legal Practice, Trial Advocacy, and Lawyering Skills, are well known and well studied.<sup>11</sup>

Deborah Jones Merritt and Barbara F. Reskin’s excellent 1997 article, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, provides the most detailed information on this topic.<sup>12</sup> The authors gathered data for all new (non-lateral) tenure-track hires between 1986 and 1991 and analyzed the outcomes by sex and race in three categories: prestige of the law school hiring the applicant; rank at which the applicant was hired; and the courses the applicant taught. While this study is the most comprehensive study to date of gender composition of courses taught, it is an incomplete analysis since course assignment was not the focus. The study examined only a small number of courses taught, and even within those subjects, only analyzed the gender composition of new hires teaching those courses. Nevertheless, their results are interesting.

Merritt and Reskin examined six areas: constitutional law, trusts and estates, skills courses, family law, corporations, and taxation.<sup>13</sup> The authors chose these areas for a combination of reasons: status in law schools; difficulty of filling positions in these fields; and/or perceived gender disproportion.<sup>14</sup> Like other scholars, Merritt and Reskin identified constitutional law as a high status course based on its popularity among the faculty as a teaching assignment and the perception that the topic enhances the chance of promotion by providing those in the field with many opportunities to publish.<sup>15</sup> The authors categorized estates and trusts and skills courses as low status because faculty commonly viewed these courses as low status courses.<sup>16</sup> They examined family law, corporations, and taxation because some faculty members felt these subjects had low status, were hard to fill, or traditionally had a gender disparity.<sup>17</sup> Each of these areas included several courses. Constitutional law included any course with the word “constitutional” in it as well as courses focusing on a part of the Constitution, such as the First Amendment, but did not include courses on civil rights or criminal procedure.<sup>18</sup> They defined “family law” to include not only courses titled Family Law, but also “courses on domestic relations, children and

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<sup>10</sup> Merritt & Reskin, *supra* note 5, at 206. See also Levit, *supra* note 5, at 781-82.

<sup>11</sup> See, e.g., Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 352-53 (1996).

<sup>12</sup> See Merritt & Reskin, *supra* note 5, at 209-11.

<sup>13</sup> *Id.* at 217-19.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 216-17.

<sup>16</sup> *Id.* at 217.

<sup>17</sup> Merritt & Reskin, *supra* note 5, at 217 n.60.

<sup>18</sup> *Id.* at 219 n.56.

the law, juvenile law, and related subjects.”<sup>19</sup> “Corporations” was defined to include Corporations, Business Organization, or Securities Law, as well as Agency and Partnership Law and presumably both Business Planning and Corporate Finance.<sup>20</sup> Tax courses were not differentiated but included any courses that had tax in the title.<sup>21</sup>

Among new hires, Merritt and Reskin found statistically significant differences between men and women with similar credentials; men were more likely than women to teach Constitutional Law, whereas women were more likely to teach both Trusts and Estates and skills courses.<sup>22</sup> No statistically significant gender difference existed in either Corporations or Taxation once other variables such as a master’s degree and experience were factored out.<sup>23</sup> Of course, controlling for these credentials eliminates factors that themselves show gender bias. For example, only 21% of attorneys who are members of the ABA Tax Section are women.<sup>24</sup>

Merritt and Reskin’s study indicated that the over-concentration of women in lower status, non-tenure track legal writing and clinical positions also occurs for new tenure track faculty in some areas.<sup>25</sup> Whether this gender segregation occurred more generally for all faculty in all courses was beyond the scope of their study. The purpose of this Article’s study was to examine course assignments more thoroughly in order to evaluate the extent of gender segregation in this aspect of law schools.

## B. Methodology

### 1. Faculty Information: Who Is Covered?

Law schools engage various types of faculty to teach classes—full time, part-time, and adjunct. Full-time tenure track faculty, those faculty that either have tenure or are tenurable, are at the heart of any law school. Nevertheless, full-time, non-tenure track faculty teach a substantial number of courses, especially in the legal research and writing and clinical fields. Given this state of affairs, it is not immediately clear whether a study of only tenure track faculty or of all full-time faculty would provide a more accurate picture of job segregation by courses taught. The question as to which database to use, however, was moot. The AALS, the most complete source of data on the topic, does not yet have

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<sup>19</sup> *Id.* at 220 n.61.

<sup>20</sup> *Id.* at 220 n.62.

<sup>21</sup> *Id.* at 220 n.63. Estate tax courses were included here rather than in the Estates and Trust category. Merritt & Reskin, *supra* note 5, at 219 n.57.

<sup>22</sup> *Id.* at 258-59, 275. Furthermore, “white women, women of color, and men of color were significantly more likely than white men to teach family law.” *Id.* See also *supra* notes 4 and 5 for other studies, especially studies regarding legal research and writing.

<sup>23</sup> *Id.* at 266.

<sup>24</sup> E-mail from Juanita Woods of the American Bar Association. (July 14, 2003) (on file with author).

<sup>25</sup> Merritt & Reskin, *supra* note 5, at 274.

enough data to do a longitudinal study of tenure track faculty only.<sup>26</sup> Fortunately, the AALS does have thirteen academic years (1990-1991 through 2002-2003) of computerized files on faculty with some type of professor rank or title (assistant, associate, or full).

This study adjusted the AALS database in two ways. First, it selected only faculty with some type of professor rank or title (assistant, associate, or full). Next, it further narrowed the database by eliminating faculty not permanently associated with a law school and engaged in teaching during this time period.<sup>27</sup> Note, however, that an initial analysis of the tenure track data for 2000-2001 and 2002-2003 shows trends similar to those revealed for the same years in the professor faculty database used in this study.<sup>28</sup> In the coming years, when the AALS has collected more data, a study comparing these two datasets would be interesting.

In order to provide the broadest longitudinal study without overwhelming the reader with data, this study focuses on comparing the oldest available data (academic year 1990-1991) to the newest data (academic year 2002-2003).

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<sup>26</sup> The AALS has reliable data regarding tenure track faculty for only three academic years, which is not enough data to do a very meaningful longitudinal study. The years included are 2000-2001, 2001-2002, and 2002-2003.

<sup>27</sup> The study excludes certain faculty with a professor title that do not meet these criteria, including adjunct professors, emeriti professors, and visiting professors with no permanent affiliation with a law school (such as a practicing attorney). Additionally, the study excludes many faculty who are only temporarily associated with a law school because these faculty do not have a professorial title, such as many legal research and writing instructors or "fellows" such as the Bigelow fellows at Chicago.

For those readers interested primarily in tenure track positions, it should be noted that in 2002-2003 approximately 85% of professor-ranked faculty were also tenure track faculty; approximately half of those who were professor-ranked but not tenure track taught either in a clinic or a legal writing and research course. For example, in the academic year 2002-2003 (one of the two years for which I have information from both databases is available) only 85% of the 7,266 faculty with a professor title (or 6,190) were actually known to be on tenure track. Six-hundred fifty-nine were known to be non-tenure track faculty, and there was no data on this subject for 417 faculty members. Although the tenure track database for the same year is a much more accurate depiction of tenure track, it is slightly inaccurate because it excludes all new faculty professors (135), who are the largest group of professors providing neither tenure status information nor information on courses taught. Five-hundred sixty-seven, or 52.6%, of the 1,076 faculty who had the title of professor but did not have a tenure track position taught either legal research and writing and/or a clinic. Of course, they may have also taught other courses as well.

<sup>28</sup> In academic year 2000-2001 there were 1,062 fewer tenure track faculty than professor title faculty, approximately 15% of the 6,934 professor titled faculty. Of this 1,062, 45.6% taught either a clinic and/or legal research and writing. The figures are so similar that the overall gender segregation pattern using tenure track data for 2002-2003 is similar to that using the professor-ranked database for that year. Consequently, it seems likely that if tenure track data were available, it would reveal similar gender patterns to those produced using the available professor-ranked database.

## 2. Data Limitations

The 1990-1991 AALS Directory of Law Teachers divided the law school curriculum into eighty-seven headings and listed under these headings all faculty who reported teaching these courses. The 2002-2003 Directory had eighty-eight such heading; Aging and the Law was the only new course and no courses were removed. Although these headings are, by and large, simple and straightforward, they present a few difficulties.

The most obvious problem is that some faculty may not list some or all of the courses they teach, or may not remove the courses they no longer teach. Another problem is the nature of the headings the AALS lists. Some are very narrow and seem to cover only one course while others are very broad. For example, not only is there an “Environmental Law” heading, but there are also listings for several environmental specialties such as “Water Rights” or “Natural Resources.” In contrast, “Federal Taxation” includes personal income tax, partnership tax, corporate taxation, international tax, and tax policy under one heading, but does not include estate and gift tax, which is listed separately. Some headings are peculiar. There is, for example, no separate heading for criminal law; instead “Criminal Justice” includes “corrections, criminal law administration and sentencing.” Although some headings cover more than one course, throughout this Article each heading is defined as a “course” to distinguish it from the study’s groupings into broader subject matter categories.

Some of the courses had too few professors in 1990-1991 and/or 2002-2003 to produce statistically significant results. As a consequence, the results for this study are based on only 81 courses for the year 1990-1991, 84 courses for the year 2002-2003, and 79 courses for the comparison across the two years.<sup>29</sup> Appendix 1 lists the results for all 87 (88 in 2002-2003) courses.

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<sup>29</sup> For measuring statistical significance for each individual year, there needed to be at least thirty professors teaching the course. For assistance, see FREDERICK J. GRAVETTER & LARRY B. WALLNAU, *ESSENTIALS OF STATISTICS FOR THE BEHAVIORAL SCIENCES* (5th ed. 2000). In 1990-1991, only 81 of the 87 courses met this requirement. Six courses did not meet the requirement: Agricultural Law, Aviation and Space, Employee Benefit Plans, Entertainment Law, Government Contracts, and Judicial Administration. In 2002-2003, 84 met this requirement because Aging and the Law (non-existent in 1990-1991), Employee Benefits, and Entertainment Law now had thirty or more professors teaching these courses. However, in order to determine significance across the years, a total of one hundred professors are needed for the combined years. JOSEPH F. HEALY, *STATISTICS: A TOOL FOR SOCIAL RESEARCH* 217 (6th ed. 2003). This limitation eliminated nine courses—the original six from 1990-1991, plus Aging and the Law, Military Law, and Workers’ Compensation. The Appendix provides data for all courses and, where appropriate, footnotes mention slight differences.



### 3. Analysis

This study examined six questions. The statistical answers to all of them are in Appendices; Appendix 1 provides an overview of most of the data and the remaining Appendices highlight certain portions, as noted. The questions are: a) Was the gender composition for a particular course disproportionate (i.e. distorted) in a particular year? b) Was the gender distortion a statistically significant *gender disparity*? c) What was the amount of gender distortion? d) Did the amount of gender distortion change between 1990-1991 and 2002-2003? e) Was the change in gender distortion between 1990-1991 and 2002-2003 statistically significant? f) Did grouping individual subjects into larger categories show any meaningful gender distortions?

#### **a. Was the gender composition for a particular course disproportionate (i.e. distorted) in a particular year?**

Gender composition is the proportion (percent) of male and female law professors either for a particular course or the overall proportion (percent) for a particular year. Whether a particular course had a gender disproportion was determined by subtracting the overall proportion of women law professors in a particular year from the proportion of women teaching a specific course for that same year. For example, in 1990-1991, the overall proportion of women law professors was 0.217 (21.7%), but only 16.9% of those people teaching Federal Taxation were women. Consequently, there was an absolute gender distortion (disproportion) of -0.048. In other words, women were under-represented, or, stated alternatively, men were over-represented. Juvenile Law, in contrast, had an over-concentration of female professors, as 42.6% of the professors for that course were women.

The term “gender distortion” or “disproportion” is used whenever the gender composition of a particular course differs from the overall proportion of women teaching law. A course that has a male distortion, measured in this absolute manner, is one that has a disproportionate number of male professors, that is, male professors are over-represented. Similarly, a course with a female distortion has a disproportionate number of female professors. Appendix 1 lists the amount of gender disproportion for each course in both 1990-1991 and 2002-2003.

#### **b. Was the gender distortion a statistically significant gender disparity?**

A gender distortion defined in this absolute manner may be either random or statistically significant. In this Article, the term “gender disparity” is used only to refer to a statistically significant gender distortion (disproportion). Thus, a course has a gender disparity only if the gender distortion was not caused by random chance as determined by using confidence intervals at the 95% level or higher. In other words, a course was deemed to have a statistically significant gender disparity if there was at least a 95% certainty that the proportions of men

and women teaching the course were not caused by random chance. A course with a statistically significant over-representation of women is labeled a “female disparity” course while one with a statistically significant over-representation of men is labeled a “male disparity” course.

Two factors determined whether a course had a gender disparity: the size of the sample population (i.e., the number of people teaching the subject) and the gender composition of teachers in that course as compared to the overall gender composition for that particular year. For example, in 1990-1991, only 15.5% of Consumer Law professors were women but the subject did not have a male disparity. However, Federal Taxation did evidence a male disparity even though a higher percentage of women, 16.9%, taught the course. The difference results from the smaller sample size for Consumer Law: only 129 professors taught Consumer Law, whereas 526 professors taught Federal Taxation. The Tables in Appendix 2 list the courses that had a gender disparity in 1990-1991 and 2002-2003.

### **c. What was the amount of gender distortion?**

Gender distortion (and disparity) can be measured absolutely or relatively. Under an absolute measure as described above and used throughout this study, the amount of a course’s gender distortion for a particular year is determined by subtracting the overall proportion of women law professors that year from the proportion of women teaching that particular course. Therefore, as the appendices show, a positive number indicates that a course had disproportionately more women than men, or a female distortion. A negative number indicates a course that had disproportionately more men than women, or a male distortion. The larger the absolute deviation from zero (positive or negative) the larger the deviation from the overall average and the larger the gender distortion. For example, in 2002-2003, the proportion of women law professors was 0.318 (31.8%). However, the proportion of women teaching Family Law was 0.588 (58.8%). Thus, the absolute gender distortion in Family Law equaled 0.27. On the other hand, since the proportion of women teaching Antitrust was only 0.118 (11.8%), the absolute gender distortion was -0.20. The absolute distortion in Family Law was, therefore, larger than that in Antitrust. Appendix 1 provides the amount of gender distortion for each course.

Relative distortion is measured by comparing the proportion of women teaching a particular course to the overall proportion of women professors that year. If the resulting number is less than one, then a male distortion exists because the percentage of women teaching the course is less than the overall percentage of women teaching; if the resulting number is greater than one, then a female distortion exists. For example, in 2002-2003 the percentage of women teaching Community Property was 0.475, whereas the overall percentage of women law professors that year was 0.318. Relative disparity is .475 divided by .318 or 1.49 (compared to an absolute distortion of 0.157). Similarly, Civil Procedure had a relative distortion of .304 divided by .318 or 0.96 (and an absolute distortion of -0.014). The closer the ratio is to one the closer the

percentage of women in a course is to the overall percentage of women professors. In other words, the distortion narrows as the ratio approaches one.

Statistical significance can be determined using the absolute method. For example, the absolute distortion in Community Property was statistically significant (yielding a female disparity course according to the definitions in this study), but the distortion in Civil Procedure was not statistically significant. Statistical significance, however, cannot be determined using the relative measure. For this and other reasons described in Appendix 5, this study uses an absolute measure of gender distortion and disparity for each year. The terms gender distortion and gender disparity thus refer to absolute distortion and disparity, unless otherwise noted.

**d. Did the amount of gender distortion change between 1990-1991 and 2002-2003?**

This study determined whether the amount of gender distortion had increased or decreased for each course between 1990-1991 and 2002-2003 (taking into account the increased overall percentage of women teaching in law school) by comparing the gender disproportion figures for the two years. For example, the gender distortion for Federal Taxation in 1990-1991 was  $-0.048$  determined by subtracting the overall proportion of women teaching law for that year ( $0.217$ ) from the proportion of women teaching the course ( $0.169$ ). In 2002-2003 this male gender distortion had increased to  $-0.096$  ( $0.222 - 0.318$ ). Thus, despite the fact that a higher proportion of tax professors were women, the absolute gender distortion had widened. Appendix 1, which contains the amount of absolute gender distortion for both 1990-1991 and 2002-2003, also indicates whether the gender distortion increased or decreased in this absolute sense.

The relative measure of disparity is most useful in the context of providing another perspective on whether the gender gap has widened or narrowed across time. The two methods show identical trends (i.e., widening or narrowing of gender disparity) for 78% of the courses that had a statistically significant change under the absolute method and similar results for the remaining 22%. As used in this Article, “similar” indicates that the gap widened in absolute terms but remained on a “par” using a relative measure (i.e., a change of  $\leq 0.05$ ). The gender gap in Immigration and Poverty Law, for example, widened under both measures, whereas the gap in Family Law widened to a statistically significant degree under the absolute method but remained on par with its 1990-1991 level.<sup>30</sup>

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<sup>30</sup> Even looking at the change in all courses, regardless of whether the change was significant, there was remarkable congruence. In almost 90% of the courses, a gap that widened in the absolute sense either widened in the relative sense or remained on par with the earlier year’s gap. In only a small minority of courses (11.4%) did these two measurements produce diametrically opposite results in that the gender gap widened in absolute terms but narrowed relatively. However, as stated in the text, none of these opposing results occurred in any of the courses that showed a significant change in gender composition across years.

Although Appendix 5 presents the relative measure of change over time, the reader should keep in mind that it is inadequate as a sole measurement for a variety of reasons. Not only is it impossible to determine statistical significance under this measure, but also it presents too optimistic a view. Family Law illustrates this inadequacy. Under the relative measure, gender distortion did not change over time. This result, however, presents too rosy a picture because it ignores the fact that over that time period the percentage of female professors teaching the course grew to higher than 50%. That students are likely to be taught the course by a female professor can strengthen the female gender identity of the course and eventually lead to gender segregation. Appendix 5 details the relative method and its disadvantages more fully.

**e. Was the change in gender distortion between 1990-1991 and 2002-2003 statistically significant?**

The Article determined whether a change in gender distortion was statistically significant- by using a hypothesis test for a two-sample case that compared the absolute distortion in 1990-1991 to the absolute distortion in 2002-2003. Distortion (disproportion) was defined as the difference between the gender proportion in a particular course and the overall gender proportions for each year (measuring by the overall proportion of women).<sup>31</sup> Appendix 4 lists all courses that had a significant change in gender distortion over the time period studied.

**f. Did grouping individual subjects into larger categories show any meaningful gender distortions?**

Many of the courses listed by the AALS are connected to others by content. Law schools often group related courses together in their catalogs to create concentrations in certain fields of law. For this study, a variety of categories consisting of related subjects were created to determine if these mega-groupings showed gender disparities. The statistical tests performed on these groupings were comparable to the tests used for the individual courses.

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<sup>31</sup> A z score was computed and then compared to the critical z of 1.96 to determine statistical significance at the .05 level and 2.58 to determine statistical significance at the .01 level. The function of this distortion score was to account for the increase in women in the law between the years by standardizing the scores. For those interested in the details, *see* HEALY, *supra* note 29, at 165 (formulas 9.8-9.10). This test could not take into account a flip in gender distortion that occurs when the non-dominant gender switches to the dominant gender. For example, assume course ABC had a gender disparity of 0.015 in 1990-1991 and -0.015 in 2002-2003. Since there is no absolute change in the deviation from zero (the average), the test finds no change. This type of switch happened in only three cases. The Estate and Gift Tax course had such a large switch that the change was statistically significant even under the hypothesis test. The other two courses displaying this kind of switch, Education Law and Entertainment Law, did not change at a statistically significant level under the hypothesis test. Nevertheless, these switches in gender are worth noting.

The answer to this question, unlike the others, will be discussed here because grouping courses into categories by subject matter generally did not prove very helpful. The categories not only mirrored the individual courses, but also hid important facts. The major exception, first year courses, is discussed in Part IC7 *infra* (page 21 and ff) and Appendix 3.

Eleven categories were initially created:<sup>32</sup> environment; first year; international; labor and employment; commercial; corporations; family; bar (multiple choice); bar (essay); government regulation (e.g. Administrative Law, Antitrust); and property courses. In 1990-1991, nine categories had a gender disparity. In other words, these categories had a statistically significant disproportion of men and women teaching them. Family Law was the only category with a female disparity. The gender distortion, regardless of statistical significance, increased for all categories between 1990-1991 and 2002-2003. By the end of the time period studied, all categories displayed a gender disparity except the Bar (essay) course.

As Appendix 3 indicates, the patterns and trends for the groups were very similar to the patterns and trends for the individual courses. The use of categories ultimately concealed interesting differences among the courses in each category rather than providing an enhanced understanding of the relationships -among these courses. One reason for this result is that certain courses are categorized differently. This categorization may affect whether a group of courses as a whole will display a statistically significant gender disparity. For example, Harvard, Michigan, and Tulane law schools categorize Immigration Law as an “international” course, but Stanford Law School does not.<sup>33</sup> Even the “first-year” category is ambiguous since some schools do not teach Constitutional Law—a prestigious, male-dominated course—in the first year.

More importantly, grouping courses into larger categories often obscures interesting patterns within categories. No matter how most categories are defined, individual courses within a category can cancel each other out. For example, authors Merritt and Reskin found no gender disparity for the taxation category,

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<sup>32</sup> Family Law was defined in two ways based on concentrations listed in several law school catalogs. The first group included courses in Family Law, Creditor and Debtors’ Rights, Conflict of Laws, Employment Discrimination, Law and Psychiatry, Estates and Trusts, Estate and Gift Taxation, Estate Planning, Women & the Law, Health Care Law, ADR, Juvenile Law, Community Property, and Aging & the Law. The other grouping consisted of more “core” courses: Family Law, Estates and Trusts, Estate Planning, Juvenile Law, and Aging and the Law. Both groups, as a whole, had female disparities. *See* Appendix 3.

<sup>33</sup> *See* Harvard Law School, Office of the Registrar, Harvard Law School Catalog 2004-2005, at <http://www.law.harvard.edu/academics/registrar/catalog>; Stanford Law School, Courses, at <http://www.law.stanford.edu/courses>; Tulane Law School, Programs of Study at [http://www.law.tulane.edu/prog/curriculum/courses\\_main.cfm?trip=areas](http://www.law.tulane.edu/prog/curriculum/courses_main.cfm?trip=areas); University of Michigan Law School, Curriculum Interest Areas, at <http://www.law.umich.edu/curriculum/interestareas/icitlaw.htm>. All sites were last visited Sept. 23, 2004. In fact, whether Immigration Law was included in the international category did not make a difference, but the content of a category may make a difference in other situations.

defined to include all courses having “tax” in the title. However, this study found large differences *within* this category.<sup>34</sup>

Looking at three tax courses in 2002-2003—Federal Taxation, Estate and Gift Taxation, and State and Local Taxation—only federal tax had a gender disparity, which was male. Moreover, between 1990-1991 and 2002-2003, the male distortion increased to a statistically significant degree. The trend for Estate and Gift Tax is also very interesting. Although there was not a gender disparity for that course in either year, there was a statistically significant change in gender distortion between the two years. In 1990-1991 there was only a slightly higher proportion of women teaching this course (0.22) compared to the proportion of women in law (0.217). However, by 2002-2003, the proportion of women teaching Estate and Gift Tax had actually fallen considerably below the overall proportion of women in law. Even though the gender distortion was not enough to create a gender disparity, the amount of *change* in gender distortion was statistically significant. Furthermore, the gender distortion switched from female to male.

Grouping the three tax courses together into a “mega-tax” category masks two other interesting facts. First, the majority of the tax courses were increasingly male. Only State and Local Taxation—probably the least prestigious and least lucrative in practice of the three tax courses—did not show a statistically significant increase in gender distortion. Second, the transformation of Estate and Gift Taxation from a slight, but not statistically significant, female disproportion to a slight male predominance may indicate a splintering of Estate Law into gendered specializations, with women teaching the less prestigious courses such as Estates and Trusts. This latter hypothesis is strengthened by examining the gender composition of Estate Planning, a course that could be grouped into an estate category but is prestigious in the sense of commanding large fees in practice and involving math. In 1990-1991, Estate Planning had a slight male distortion. By 2002-2003, however, the distortion had increased so much that it was statistically significant, or in the terms of this study, had a male disparity. Appendix 3 lists the categories and their gender disparities.

### C. The Results and Discussion

This study reveals three broad results. The first two are contrary to expectation. First, gender segregation increased even as the gender composition of all law professors became more equal. Second, gender segregation increased in two different ways. More courses had a gender disparity, and a substantial number of courses experienced a statistically significant widening of the gender distortion. Third, courses that had a gender disparity or experienced a statistically significant change in gender distortion generally could be classified as either “male” or “female” courses. These courses are defined loosely to encompass traits generally thought of as falling within traditional male or female

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<sup>34</sup> Merritt & Reskin, *supra* note 5, at 266; *See also infra* Appendix 2.

rubrics, respectively. Courses that experienced substantial changes in gender composition frequently were courses that had either experienced some change in gender traits or simply aligned gender composition with an already existing gender identity.

In this study, a “male” course is defined as having one or more of the following traits: 1) deals with core legal subject matter, such as Evidence or Corporations, 2) is a traditionally prestigious<sup>35</sup> area of the law within the legal academy, such as Constitutional Law, 3) is a prestigious area of the law in practice because it commands high fees, has high intellectual content, high status clients, and/or is in high demand, such as Intellectual Property, and/or 4) involves a lot of scientific and/or regulatory aspects, such as Corporate Finance, Federal Taxation, and Antitrust. A prototypical male course such as Law and Economics, one of the most male-dominated courses, fits many of these criteria. Law and Economics is a prestigious specialty (e.g., a field with many publications in law review articles, theoretical and intellectual), a powerful force in both law and law schools, and is traditionally male in its concern with hard numbers and abstract facts.<sup>36</sup> Under this definition, courses that increased the amount of law and economic analysis in their content –would have a more “male” gender identity and could become more male dominated.

A “female” course, in contrast, is one that has one or more of the following traits: 1) involves topics traditionally of interest to women involving relationships among people, such as Family or Juvenile Law, 2) is softer law, such as Poverty or Immigration Law, as opposed to traditional, more doctrinal or hard core subjects such as Contracts, Conflicts of Laws, or Federal Courts, 3) is a traditionally less prestigious area of the law within the legal academy such as Legal Writing and Research or Clinical Law, and/or 4) deals with a less prestigious area of practice, such as Immigration or Poverty Law. A prototypically female course, such as Women and the Law, the most female dominated course, fits many of these criteria.

The five appendices provide more detailed results. Appendix 1 provides a summary of all the data regarding individual courses under the absolute measure. For each course it enumerates for both 1990-1991 and 2002-2003: 1) the proportion of women teaching it; 2) its variation from the average proportion of women; 3) whether that variation was statistically significant (giving the course “gender disparity” status); 4) whether there was an increased distortion over the time period; and 5) whether that change was significant. Appendix 2 lists the

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<sup>35</sup> Obviously, what is a prestigious area in both academia and practice is open to some disagreement. In the practice area, two researchers define intellectual challenge and clientele as major characteristics of prestige. Securities and Tax Law were examples of prestigious fields, while Divorce, Family, and Poverty Law are among the “lowest ranked fields.” Jo Dixon & Jordana Pestrong, *The Changing Terrain of Sex Stratification in the Legal Profession*, 9 CURRENT RES. ON OCCUPATION & PROF. 233, 242 (1996). In academia, Constitutional Law is traditionally agreed to be a prestigious course. See *infra* note 49 and accompanying text regarding high and low prestige courses in academia.

<sup>36</sup> See, e.g., Gaber, *supra* note 4, at 196; William M. Landes & Richard A. Posner, *The Influence of Economics on Law: A Quantitative Study*, 36 J. L. & ECON. 385 (1993).

courses, by gender, with gender disparities (statistically significant gender distortions). Appendix 3 groups many courses into larger categories (by subject matter) and indicates whether these categories had gender disparities. Appendix 4 lists those courses that had a statistically significant change in gender distortion over the time period. Appendix 5 explains the alternate relative measure of distortion more fully than the text and provides a table of results under this measure.

The seven sections below, and the accompanying discussions, provide a more detailed summary of the major findings listed in the Introduction.

**1. The number of courses with a gender disparity between male and female professors teaching them increased between 1990-1991 and 2002-2003.<sup>37</sup>**

**By 2002-2003, three-quarters of courses had a gender disparity.**

At the start of the time period (1990-1991) fifty-one of eighty-one AALS courses (63%) had a gender disparity (a statistically significant gender disproportion among professors teaching the courses). At the end of the period (2002-2003), sixty-four of eighty-four courses (76.2%) had a gender disparity.<sup>38</sup> This change is a 25.5% increase in the number of courses, evidencing a gender disparity.<sup>39</sup> This increase is not logically consistent with the corresponding 45.6% increase in the overall proportion of women law professors during the same time period. As Appendix 5 explains in detail, most courses that became gender disparate experienced a widening in the gap under both the absolute measure and the alternative relative measure.<sup>40</sup>

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<sup>37</sup> See *supra* note 31 and accompanying text for a discussion of the hypothesis test used to evaluate change over time.

<sup>38</sup> The increase in courses from the 81 in 1990-1991 to 84 in 2002-2003 is due to two factors: 1) the addition of one new course listing in the AALS Directory (Aging & the Law); 2) three courses listed in 1990-2001 that did not have enough professors teaching them to yield statistically significant results but had enough professors teaching them in 2002-2003 to yield these results.

<sup>39</sup> Thirteen more courses had a gender disparity at the end of the period. This is a 25.5% increase over the number at the beginning of the period ( $13/51 = 25.49\%$ ). Courses with a gender disparity increased by 3.23 percentage points from 62.96% (61/81) at the start of the period to 76.19% (64/84) at the end. This is a 21% increase ( $13.23/62.96$ ).

<sup>40</sup> If women were over-represented in 1990, then the relative measure, already over one, would further increase. In four courses (Introduction to Law, Law Office Management, Mass Communications, and Torts), the two measurements differed. In other words, the relative gap narrowed (the percent of women in a particular course as a percent of the overall percentage of women increased), while the absolute disparity increased enough that the courses became male disparity courses, having a statistically significant preponderance of males. See Appendix 5 for a discussion of the two measures, and Table 2 for specific courses that became male disparate.



**2. The number of courses with a female disparity increased over the time period by almost 56%. Courses that had a female disparity generally fit the “female” course label.**

Significance tests indicate in 1990-1991, 12.3% of the courses (ten out of eighty-one) had a female disparity. By 2002-2003, that percentage had risen to 16.7% (fourteen out of eighty-four). These courses, listed in Tables 1A and 2A of Appendix 2, generally fit the “female” prototype described earlier. These courses were less prestigious, softer, more peripheral, and/or covered traditionally female areas that are concerned with more caring and relational aspects of the law. Thus, this study, consistent with other studies, found that Clinical Law and Legal Research & Writing fit within this category. Additionally, other subjects such as Family, Poverty, Juvenile and Immigration Law, fit the “female” category as expected.

**3. The number of courses with a male disparity also increased. Courses that had a male disparity generally fit the “male” label.**

Significance tests showed that in 1990-1991, 50.6% of the courses (forty-one of the eighty-one) had a male disparity. By 2002-2003, that percentage had increased to 59.5% (fifty of eighty-four).<sup>41</sup> The majority of these courses are classic male courses in that the subjects are prestigious, in high demand, core legal courses, and/or difficult courses that involved science, math, or significant amounts of regulation and commanded high fees in practice. Administrative Law, Antitrust, Constitutional Law, Corporations, and Law and Economics are all examples of courses that fit this description and had male disparities throughout the time period studied.

**4. Between 1990-1991 and 2002-2003, 22.8% of courses (18 of 79) experienced a statistically significant increase in gender distortion. In contrast, only 5.1% (four of seventy-nine) experienced a statistically significant decrease in gender distortion.**

Absolute gender distortion is measured by the amount by which the proportion of women professors in a specific course varies from the overall proportion of women law professors in the same year. Consequently, an increase in the absolute percentage of women teaching a subject in 2002-2003 as compared to 1990-1991 does not necessarily mean that the gender distortion changed over time because the overall percentage of women professors increased over the same time period. One would expect gender distortions to narrow, all things being equal, given the dramatic increase in women teaching law over this time period. Contrary to this expectation, 22.8% (eighteen of the seventy-nine)

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<sup>41</sup> Fourteen courses attained male disparity status, while three lost that status. The courses are listed in their entirety in Appendix 2, Tables 1A and 2.

of the courses tested had a statistically significant increase, and only 5.1% had a statistically significant decrease.<sup>42</sup> In other words, the increase/decrease - did not occur randomly. Appendix 4 lists all twenty-two courses that experienced statistically significant changes in gender distortion.

Many of the courses that had significant changes over time already had a strong gender identity in 1990-1991. These gender distinctions strengthened over time. Examples of courses with female identities that experienced substantial increases in gender disparity over time include: Clinical Law, Family Law, and Legal Research and Writing. Male courses that experienced a substantial widening of the gender gap include: Constitutional Law, Corporations, Corporate Finance, Federal Taxation, and Regulated Industries.

**5. A change in gender identity appears to be associated with changes in gender distortion. Many courses that experienced a change in gender disparity status or a significant change in gender distortion experienced some change in their gender identity.**

Between 1990-1991 and 2002-2003, some courses experienced a change in their gender identity, meaning they became more like prototypical “male” or “female” courses. Courses became more male if the demand for them increased, prestige increased, and/or the content became more regulatory. Courses became less masculine if they became less prestigious and more peripheral to legal practice or theory. Similarly, courses became less female if they became less peripheral or if the “relational” or people aspect of the course became less important due to increases in regulatory content. These two trends are obviously related. A female course that loses some of its female traits because it becomes more regulatory increases its male traits. Many courses that experienced a change in gender identity also experienced statistically significant changes in gender distortion.

Health Care Law, the only course with a female disparity in 1990-1991 to experience a significant narrowing of that disparity over time, illustrates this phenomenon. The declining female disparity in Health Care Law occurred as the course experienced a shift in gender identity, becoming less female and more male. As this area of practice grew and the nature of its practice became more regulatory, it lost some of its female traits by becoming less soft and less peripheral. Concomitantly, it gained male traits as it became more popular, more regulatory, and possibly more monetarily rewarding, all of which increased its prestige.

Most of the other courses with significant changes in gender distortion also had a change in gender identity. For example, Alternative Dispute Resolution

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<sup>42</sup> Again, statistical significance means that one can say with at least a 95% certainty that the increase did not occur by chance. Using the relative measurement of disparity discussed previously, all courses that had a statistically significant increase in absolute disparity also had a widening percentage gap, except for Family Law and Legal Writing and Research, which remained consistent with 1990 relative levels. *See* Appendix 5.

(“ADR”), Estate and Gift Tax, and Property, had significant changes in gender distortion that drastically altered gender composition. In 1990-1991, ADR and Property had a slight female distortion. However, by 2002-2003, ADR was essentially gender neutral and the Property almost so. ADR’s shift away from a female identification was accompanied by increased masculinity as the subject became a more popular course and grew closer to the core of law.<sup>43</sup>

The statistically significant decrease in female distortion in Property is not clearly attributable to a shifting gender identity, but several possible explanations may clarify this distortion. One reason for this distortion may be that property has become less attractive to women as Law and Economics (a male disparity course) becomes a bigger part of its focus. Certainly other property-related classes are male dominated. Land Use Planning and Real Estate Transactions, for example, are both male disparity courses and male distortion increased over time in a grouped category consisting of property-related courses.<sup>44</sup> Similarly, the decrease in the percentage of women teaching Property, a first-year course, is consistent with the over-representation of men in some other substantive first-year courses. Another possibility is that women are less attracted to Property because it is a large class. Finally, in schools that have a four course teaching load regardless of the credit hours, Property may have become more attractive to men as its number of credit hours dropped.<sup>45</sup> These explanations may also explain the rise of Torts to male disparity status.

Estate and Gift Taxation displays one of the most interesting shifts in gender identity because of the statistically significant change in gender distortion, which actually caused the gender distortion to convert from slightly female to slightly male. From many perspectives, this course easily fits the male rubric. It is highly technical, regulatory, and monetarily prestigious. This study hypothesizes that the increased percentage of women law professors facilitates more gender stratification. In this case, the broader Estate field could be separated out into male areas such as Taxation, and softer, less prestigious female areas such as the basic Estates and Trust course.<sup>46</sup>

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<sup>43</sup> Labor Law had a statistically significant widening in its male gender distortion, although it has not yet attained male disparity. Since the course is not obviously male, it is not clear whether it will “tip” into this category. Nevertheless, when placed in the context of other labor-related courses, there may be a trend. Employment Discrimination, for example, saw a significant narrowing of the gender distortion, although it remains a female disparity course. As a whole, these observations may indicate that Labor Law is becoming more masculine. Entertainment Law also switched from slightly female distorted to slightly male distorted, although the change cannot be said to be statistically significant under the hypothesis test. This test only measured absolute deviations from the overall percentage without taking into account the switch. Nevertheless, the change is substantial and also fits within the pattern of changing gender identity. Entertainment Law lost its female trait of being a more peripheral course and became more male as its intellectual property component, popularity and, presumably, monetary rewards grew.

<sup>44</sup> See Appendix 3.

<sup>45</sup> I thank Professor Deborah Jones Merritt for this point.

<sup>46</sup> Education Law flipped in the opposite direction, from being slightly male to slightly female. This change is certainly substantial, although it cannot be said to be statistically significant under the

Legal Profession, on the other hand, had a statistically significant decrease in its male distortion, losing both its male disparity and experiencing a significant narrowing of its distortion. Despite being mandated by Bars, this course was never a core course, and certainly never prestigious. Again, the increased percentage of women law professors allows male professors to leave less prestigious courses to females. Under this study's hypothesis, this shift facilitates a switch in gender identity to female. It may also explain the significant increase in the proportion of women professors in Legal Method. In the case of Legal Profession, the course is now almost gender neutral and if the trend continues, as hypothesized, it will tip into female disparity. In Legal Method, the course has moved from being essentially gender neutral in 1990-01 to having a female distortion.

**6. Statistically significant widening gender distortions suggest that for some courses gender identity may intensify over time leading to the gender segregation of many courses.**

The widening gender distortions described in the above discussion suggest that, barring external factors such as increased popularity of a course, the gender identity of some courses will intensify and may ultimately lead to gender segregation. This trend is especially true for courses that clearly fit under either "male" or "female" rubrics. This trend is most obvious in the courses that were already gender disparate in 1990-1991, and experienced significant widening gender distortions over time. For example, Federal Taxation, Corporate Finance, and Regulated Industries, are all male courses that neatly fit a male gender identity. These courses already had male disparities in 1990-1991; these disparities significantly widened by 2002-2003, both under an absolute and a relative measure.<sup>47</sup> Similarly, Clinical Law fits a female gender identity and experienced a significant widening of the gender gap by 2002-2003, again under both an absolute and relative measure. The tendency toward increasing identification with a gender appears especially strong in courses that had a female distortion in 1990-1991.

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hypothesis test. This test only measured absolute deviations from the overall percentage without taking into account the switch. This switch suggests a tipping of Education Law into a female identity that fits within the traditional female rubric.

<sup>47</sup> The increase in male distortion was statistically significant in the following courses: Regulated Industries; Commercial Law; Constitutional Law; Corporate Finance; Corporations; Creditor/Debtor Relations; Legal History; Federal Taxation; Labor Law; Estate and Gift Tax; Law and Psychiatry; and Products Liability. The first eight courses already had a male disparity in 1990-1991 and saw a statistically significant increase in that disparity over time. The latter two attained male disparity status over the same time period whereas the remaining three, despite the statistically significant increase in distortion, simply were disproportionately male, but not at a statistically significant level. If the increase in distortion continues, however, the courses will tip into the male disparity category in the near future. As described in the text, Estate and Gift Tax switched the dominant gender in the course from being slightly disproportionately female to being slightly male.

In 2002-2003 five courses had a female proportion that exceeded 50%: Family Law; Juvenile Law; Poverty Law; Legal Research and Writing; and Women and the Law. Six courses had a female proportion that exceeded 40%: Clinical Law; Community Property; Employment Discrimination; Immigration Law; Law and Medicine; and Social Legislation. High percentages of female professors would logically strengthen a course's female identity since the majority of students will experience the course as a female-taught subject. The next several years should indicate whether high female proportions accelerate gender segregation in these courses by acting as a "tipping" point similar to the one experienced in racial housing patterns.

**7. A "first-year" category, composed of substantive first-year courses, has a male disparity, in contrast to Legal Research and Writing, which has a female disparity.**

The patterns and trends for ten broad categories, composed of several content related courses, echo the gender distortions that occur in individual courses. In both cases, gender distortions widened over time and only the "female" category of Family Law showed a female disparity. However, as described in Subpart IB and Appendix 3, categories ultimately concealed more than they revealed except for the "first year" category.

First-year courses are especially important. As a student's first experience in law school, the courses can dramatically affect a law student's intellectual development, psychological relationship towards, and ultimate success in, the law. Thus, any gender disparity in this year is of special concern.

In 1990-1991 four first-year courses individually had gender disparities: Constitutional Law, Contracts, Criminal Justice, and Legal Writing and Research. The three substantive courses had male disparities and only Legal Writing and Research, a process course, had a female disparity. By 2002-2003, Torts also had a male disparity. This disparity may be explained by the same factors causing an increased percentage of males in Property. The remaining courses individually experienced different changes in gender distortion.<sup>48</sup>

The first-year courses as a category, however, showed statistically significant increases in gender disparity. The substantive courses increased their male disparity (largely due to the increase in Constitutional Law), while the less prestigious process course, Legal Writing and Research, significantly increased

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<sup>48</sup> Three courses experienced non-statistically significant decreases in gender distortion: Civil Procedure; Criminal Justice; and Property. The first two had been disproportionately male in 1990-2001, but the gap narrowed. Criminal Justice, however, remained male at a statistically significant level. This subject is complicated, however, because the AALS includes in it not just first year Criminal Law, but upper class courses as well. Property, which had a slightly female distortion in 1990-1991, showed such a statistically significant narrowing of the gender gap that the gap was almost eliminated. Torts and Constitutional Law, however, showed statistically significant increases in gender distortion. Torts attained male disparity status. Constitutional Law, already in the male disparity category, had a statistically significant increase in the proportion of male instructors.

its female disparity. Interestingly, another process course sometimes taught in the first-year, Legal Method, showed a statistically significant increase in the proportion of women teachers. Legal Method moved from being essentially gender neutral to a female distortion. This distortion will turn into a full-blown gender disparity if the rate of change continues at such a rapid pace.

The overall effect of this increased male disparity in first-year courses is that today's first-year students are likely to have predominantly male teachers. Moreover, the only individual first-year course in which a student is more likely to have a female professor is Legal Writing—a less prestigious, process course that most students dislike. This may partially explain female law students' disproportionately poor performance in law school. Unsurprisingly, female students may interpret these two gender disparities as signs that the law is still largely male and, to the extent females are part of the legal enterprise, they occupy less prestigious positions.

### 3. Summary

By academic year 2002-2003, more than 30% of law professors were women, a 45.5% increase from academic year 1990-1991. Nevertheless, the courses men and women teach not only remain largely segregated, but this segregation has increased in many courses. The gender disparity and gender distortion fit a pattern. Generally, female law professors disproportionately teach courses that can be described as more “feminine,” softer, less hard core, and often perceived as less prestigious.<sup>49</sup> Barring outside influences, such as a

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<sup>49</sup> I abandoned attempts to find a more precise pattern by grouping courses into categories, either by subject matter or by prestige. Categorizing by status or prestige proved far too subjective. The majority of professors probably considers Constitutional Law a high status course and Legal Writing and Research a low status course. Trusts and Estates frequently falls in the low status category, primarily because few articles in the field are published in law reviews. Fred R. Shapiro, *The Most Cited Law Review Articles Revisited*, 71 CHL.-KENT L. REV. 751, 761 (1996). The status of the vast majority of courses, however, is vague. For example, Merritt and Reskin initially included Family Law, Taxation and Corporations in their study because faculty suggested these courses were low status, but they ultimately concluded that all three areas were in the middle status range. Merritt & Reskin, *supra* note 5 at 217, 273 n.223. Yet how the authors reached their conclusion is never stated. Certainly, if a criterion of low status is a small number of articles published in the field, then Taxation is a very low status field. See, e.g., William J. Turner, *Tax (and Lots of Other) Scholars Need Not Apply: The Changing Venue for Scholarship*, 50 J. LEGAL EDUC. 189, 192 (2000). In 1996-1997, there were eight tax articles in major law reviews that comprised 2.27% of the articles published in these reviews. *Id.*

Categorization by grouping courses also proved surprisingly difficult. Many law school catalogs and web sites categorize course offerings by concentrations. These groupings may cue students as to which courses are high status, depending on whether they are assigned to a high or low status concentration. Whether a course is high status may be indicated by whether it is grouped with other courses that are deemed high status. Once again, such sorting runs into difficulties. For example, it is not unreasonable to classify the field of International Law as high status based on criteria such as the growing demand for courses by both law students and law schools, as well as an increasing number of articles published in law reviews. Yet the determination of whether women

change in the popularity of a course or its regulatory aspect, the gender identity of a course usually remained unchanged between 1990-1991 and 2002-2003. In fact, many more courses (eighteen) saw a statistically significant widening of the gender distortion than a narrowing (four) over that time period.

The results of this study contradict what one might expect but fit within a larger pattern of job segregation and re-segregation by gender. All things being equal, any gender gap that women suffer in a particular occupation should dissipate as their representation in the field increases. In other words, the differences between men and women in all aspects of the profession, including the type of job held, job status, and pay, should diminish and eventually disappear as the number of women in law increases and women become assimilated into the legal world.<sup>50</sup> Nevertheless, the gender segregation displayed in this study fits a broader pattern. Many occupations that have become gender integrated as a whole have experienced re-segregation within specialties, with women holding the less prestigious, lower paying jobs. Part II discusses this disparity in the context of job segregation by gender, a well-studied phenomenon in other fields. First, Subpart IIA summarizes research establishing the existence and patterns of what is variously called “job” or “occupational segregation” or “sex” or “gender segregation.” Subpart IIB analyzes some of the causes of segregation, focusing on the subtle, often unconscious psychological factors, especially gender schemas and a related concept called “stereotype threat.” Subpart IIC discusses some consequences of the gender segregation of courses taught.

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are under-represented in this high status area depends on which law courses are included. Law schools obviously include courses falling under the AALS categories of International Law, International Transactions, and International Organizations in their International Law grouping. But Immigration Law is not so consistently treated. Harvard, Michigan, and Tulane, for example, include it in their International concentration, but Stanford does not. *See, e.g.*, Harvard Law School, *supra* note 33, at <http://www.law.harvard.edu/academics/registrar/catalog>; Stanford Law School, *supra* note 33, at <http://www.law.stanford.edu/courses>; Tulane Law School, *supra* note 33, at [http://www.law.tulane.edu/prog/curriculum/courses\\_main.cfm?trip=areas](http://www.law.tulane.edu/prog/curriculum/courses_main.cfm?trip=areas); University of Michigan Law School, *supra* note 33, at <http://www.law.umich.edu/curriculum/interestareas/icitlaw.htm>. Even looking at first-year courses is problematic since some schools place Constitutional Law in the second-year, and this is ignoring any electives in the first year. Nevertheless, various categories were created such as commercial, corporate, environmental, family, first-year, governmental regulation, international, and property, as well as two dealing with bar courses: one for multi-state courses and one for courses commonly on the essay portion. Despite various configurations of these categories, the only category that was statistically significant was the family law category.

<sup>50</sup> *See, e.g.*, Kathleen E. Hull & Robert L. Nelson, *Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers*, 79 SOC. FORCES 229, 230 (2000).

## II. OCCUPATIONAL SEGREGATION BY GENDER AND LAW COURSES TAUGHT

### A. Occupational Segregation by Gender<sup>51</sup>

Paid employment is one of the most highly gendered aspects of life.<sup>52</sup> Not only are most jobs segregated by gender—despite the vastly larger job opportunities now available to women—but women are concentrated in the less prestigious, less well-paid jobs.<sup>53</sup> Even when women enter a traditionally male occupation, specialization within the field often remains gendered, with women concentrated in less desirable areas.<sup>54</sup> Some social scientists hypothesize that job integration, like housing integration, is not a stable end state. Rather, the entrance of women into a male dominated field is followed either by a total re-segregation of the occupation or, more commonly, by a “ghettoization” or segregation of women into lesser pay, lesser prestige subspecialties within the field.<sup>55</sup> School teachers and telephone operators, for example, have become totally re-segregated as female occupations. Law, in contrast, has not re-segregated as a field, but shows evidence of ghettoization or stratification within specialties.<sup>56</sup>

<sup>51</sup> Many scholars have studied sex or gender segregation of occupations. *See, e.g.*, Anker, *supra* note 1; GENDER INEQUALITY AT WORK (Jerry A. Jacobs ed., 1995); WOMEN’S WORK, MEN’S WORK: SEX SEGREGATION ON THE JOB (Barbara F. Reskin ed., 1986); SEX SEGREGATION IN THE WORKPLACE: TRENDS, EXPLANATIONS, REMEDIES (Barbara F. Reskin ed., 1984). This section relies heavily on three sources, which are cited here rather than individually throughout: 1) a much cited book on the topic, BARBARA F. RESKIN & PATRICIA ROOS, JOB QUEUES, GENDER QUEUES: EXPLAINING WOMEN’S INROAD INTO MALE OCCUPATIONS (Ronnie J. Steinberg ed., 1990); 2) a condensed, and slightly more recent, explanation of the concept and summary of the empirical research in the area: Barbara Reskin, *Sex Segregation in the Workplace*, 19 ANN. REV. SOC. 241, 245-47 (Judith Blake ed., 1993); and 3) a good summary article, Cecilia L. Ridgeway, *Interaction and the Conservation of Gender Inequality: Considering Employment*, 62 AM. SOC. REV. 218 (1997).

<sup>52</sup> *See, e.g.*, Ridgeway, *supra* note 51, at 218 (two major components of gender hierarchy are paid employment and the division of unpaid domestic labor within households).

<sup>53</sup> ANKER, *supra* note 1, at 403; Reskin, *supra* note 51, at 245-47.

<sup>54</sup> Reskin, *supra* note 51, at 247.

<sup>55</sup> Rosemary Wright & Jerry A. Jacobs, *Male Flight From Computer Work: A New Look at Occupational Resegregation and Ghettoization*, in GENDER INEQUALITY AT WORK, *supra* note 51, at 335-43. Other literature distinguishes between re-segregation and ghettoization. The former “occurs when an entire occupation or a major occupational specialty switches from a predominantly male to a predominantly female labor force.” RESKIN & ROOS, *supra* note 51, at 71. Ghettoization “occurs when women and men in the same occupational title typically perform different jobs . . . work in different firms or industries and hold different job titles and ranks . . . [and] usually perform different tasks.” *Id.*

<sup>56</sup> A 1989 study did not find segregation within law specialties (ghettoization). Wright & Jacobs, *supra* note 55, at 364-67. However, more recent legal studies negate this finding, including the 2001 ABA report. Rhode, *supra* note 2. *See also* Kay, *supra* note 2, at 731, 739 (males were more



Although gender segregation and re-segregation of occupations and/or specialties within occupations is widespread, its causes are complex.<sup>57</sup> Economic factors—such as labor markets (supply and demand) and work experience—play an important role. Historical factors such as technological changes, the women's movement and the civil rights movement also play an important role in understanding this segregation. Economic and historic factors, however, only partially explain the phenomenon. Occupations typically become feminized when the abilities needed to perform the job become stereotypically feminine (often due to a technological change). Occupations also become feminized when women move into the field in large numbers and men subsequently move out of (or do not enter) occupations because of a decline in pay and/or prestige associated with the entry of women. A large body of literature in psychology and sociology suggests that a large portion of today's gender segregation occurs through unconscious individual and institutional biases.<sup>58</sup> Universities are not immune to these forces. A 1999 study by MIT revealed that its women science faculty members had suffered largely unconscious and institutional gender discrimination and other universities found similar situations.<sup>59</sup>

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likely to become partners at law firms and women had to exaggerate male traits to succeed in becoming partners); Dixon & Pestrong, *supra* note 29.

<sup>57</sup> See, e.g., ANKER, *supra* note 1, at 14-21; Reskin, *supra* note 50. RESKIN & ROOS, *supra* note 51, at 29 (describing the change in gender composition of occupations as occurring as the result of two "queues": a labor queue in which employers rank their preferences for workers and a job queue in which employees rank their preferences for jobs).

<sup>58</sup> See discussion *infra* Part IIB. See also VALIAN, *supra* note 2; Ann C. McGinley, *Viva La Evolucion!: Recognizing Unconscious Motive in Title VII*, 9 CORNELL J.L. & PUB. POL'Y 415, 434-45 (2000) (gender schemas); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1186-211 (1995) (discussing social cognition theory, which indicates that discrimination is largely unconscious, resulting from normal cognitive functions that categorize and otherwise filter information into usable form).

<sup>59</sup> MASSACHUSETTS INSTITUTE OF TECHNOLOGY, A STUDY ON THE STATUS OF WOMEN FACULTY IN SCIENCE AT MIT, REPORT OF THE SCHOOL OF SCIENCE 3 (2002), available at <http://www.mit.edu/faculty/reports/sos.html> (last visited Sept. 23, 2004) [hereinafter MIT STUDY]. A 2002 report by the Massachusetts Institute of Technology looking at other schools in the university found similar results in its other departments. MASSACHUSETTS INSTITUTE OF TECHNOLOGY, THE STATUS OF WOMEN FACULTY AT MIT: AN OVERVIEW OF REPORTS FROM THE SCHOOLS OF ARCHITECTURE AND PLANNING; ENGINEERING; HUMANITIES, ARTS, AND SOCIAL SCIENCES; AND THE SLOAN SCHOOL OF MANAGEMENT (2002), available at <http://www.mit.edu/faculty/reports/overview.html> (last visited Sept. 23, 2004). Several other universities have recently reached similar conclusions. See, e.g., California Institute of Technology, Diversity News and Reports, Committee on the Status of Women Faculty at Caltech (December 3, 2001), at <http://diversity.caltech.edu> (last visited Sept. 23, 2004); Duke University, Women's Initiative, at [http://www.duke.edu/womens\\_initiative/news.htm](http://www.duke.edu/womens_initiative/news.htm) (last visited Sept. 23, 2004). A recent analysis of faculty by gender and race in the math, science, and engineering departments of fifty top universities by Donna Nelson revealed that the percentages of women at these universities lagged behind the numbers obtaining doctorates in the field. See Donna Nelson, Nelson Diversity Surveys, at <http://cheminfo.chem.ou.edu/faculty/djn/diversity/top50.html> (last visited Sept. 23, 2004).

There is no study comparable to the MIT study that comprehensively examines the causes of women's low status in law schools. However, the 2001 Report by the ABA Commission on Women in the Profession reiterated that in law generally, including law schools, "unconscious stereotypes" were a major reason that, despite equal qualifications to those of men:

Women in the legal profession remain underrepresented in positions of greatest status, influence, and economic reward. They account for only about 15 percent of federal judges and law firm partners, 10 percent of law school deans and general counsels, and five percent of managing partners of large firms. On average, female lawyers earn about \$20,000 less than male lawyers, and significant disparities persist even between those with similar qualification, experience, and positions.<sup>60</sup>

The ABA Report noted that this situation occurred in law schools as well as the legal profession generally.<sup>61</sup> Previous studies, discussed in Part IA, have confirmed that there is gender segregation within law schools by demonstrating that women have lower tenure and promotion rates than equally qualified men, get hired at lower ranks than males and are overly represented in the less prestigious legal research and writing and librarian fields.<sup>62</sup> This study indicates that course specialization within law schools is even more widely segregated by gender than previously recognized, and that over a thirteen year period gender disparity increased despite an increased proportion of female law professors. Moreover, the pattern of gender disparity across courses is similar to the gender sub-specialization found in other occupations; women are congregated in less prestigious and/or more traditionally feminine subjects. Extreme examples of this gender segregation are Law and Economics, the prototypical male course, and Women and the Law, the prototypical female course.<sup>63</sup> From 1990-1991 to 2002-2003 each course was almost totally segregated. More than 90% of the professors teaching Law and Economics were male while more than 90% of those teaching Women and the Law were female.<sup>64</sup>

There are strong indications that re-segregation or ghettoization, which has occurred in some occupations, is also occurring in the context of which [I think which is better than what] courses law professors teach. As described in Part IC, the majority of courses have gender disparities and, by and large, their gender identities remained unchanged over time. The few gender identity changes that did occur correlate with two other changes. The first is an external change in the course, such as increased popularity or regulation. The other change had a more internal dynamic; as more women enter the profession, the courses more naturally sorted themselves out by underlying gender traits. For example, men could begin to abandon courses that were less prestigious, such as Legal

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<sup>60</sup> Rhode, *supra* note 2, at 5. See also *supra* note 1.

<sup>61</sup> *Id.*

<sup>62</sup> See *supra* notes 10-25 and accompanying text.

<sup>63</sup> See *supra* note 36.

<sup>64</sup> See Appendix 1.

Profession. These changes, however, were the exception. More courses showed a widening gender disparity and concomitant strengthening of gender identity over time than a changed gender identity.

The strongly gendered nature of this pattern suggests that it does not result solely from either personal choice or economic factors such as prior work experience. Indeed, Merritt and Reskin's earlier research found that personal choice and other factors such as credentials and prior experience could not account for all the differences among the courses newly hired tenure track professors taught.<sup>65</sup> Rather, social patterns and practices such as institutional practices, cultural values, and gender stereotyping also play an important role in job segregation.<sup>66</sup> These patterns may result from thought processes that are often unconscious. Many of the conscious, personal choices that are factors in gender segregation are affected by these largely unconscious patterns and practices.<sup>67</sup> For example, prior legal experience is one of the factors that determines which course a person teaches, but the conscious choice of a particular practice area is itself influenced by these unconscious processes.

Beliefs about gender are some of the most pervasive and often unconscious beliefs people hold because gender is generally an easily recognizable characteristic. Consequently, people make assumptions based on gender in all their interactions with other people, including those in the work place.

Cognitive theorists label the constellation of thought processes revolving around gender, "gender schema."<sup>68</sup> Gender schemas affect important work-related events, such as hiring, placement, evaluation, and promotion.<sup>69</sup> Gender schemas also influence job preferences (by both employer and employee), and affect the valuation of people's work as well as the pay they receive. These phenomena also affect the individual actor's job interests and her expectations of salary and benefits. Many social scientists believe that gender schemas help explain why job segregation often occurs within a field even when women enter it in large numbers.<sup>70</sup> Subpart IIB, below, explains gender schema, and a related phenomenon, "stereotype threat," more fully.

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<sup>65</sup> See, e.g., Merritt & Reskin, *supra* note 5, at 267-73. Preference played the strongest role in Family Law where females were, at a statistically significant level, more likely to specialize in the area or work for a Legal Aid office in which domestic relations cases loom large.

<sup>66</sup> See, e.g., Reskin, *supra* note 51, at 248; Ridgeway, *supra* note 51, at 219-20, 224-26 (cultural schemas reinforce sex/gender categorizations in institutional settings, including the workplace).

<sup>67</sup> Ridgeway, *supra* note 51, at 230.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 229-31. See also Reskin, *supra* note 51, at 245-47.

<sup>70</sup> Reskin, *supra* note 51, at 247; Ridgeway, *supra* note 51, at 230; VALIAN, *supra* note 2, at 197-206 (women in various professions), 217-49 (women in academia).

## A. The Role of Cognitive Processes in Gender Segregation in Law Courses: Gender Schema and Stereotype Threat

### 1. Gender Schema

A vast amount of literature explores gender bias from psychological and sociological perspectives. Although an in-depth analysis of this literature is well beyond the scope of this Article, a brief look provides fruitful insights into the causes of the gender disparities in courses that male and female law professors teach. Two somewhat overlapping phenomena are especially useful: gender schema and stereotype threat. The human brain—powerful as it is—cannot quickly process the multitude of data that it daily receives and must use. A “schema” is one of various mechanisms that enable an individual to acquire, store, and retrieve knowledge in the face of a barrage of stimuli.<sup>71</sup> A scheme is both a cognitive and affective process that organizes an individual’s prior knowledge.<sup>72</sup> This organization influences the perception of new information, affect, and values.<sup>73</sup> Thus, schemas serve many functions. First, they lend organization to an individual’s experience

in the sense that people order the elements of their environment to reflect the structure of relevant schemas. Second, schemas influence “what information will be encoded or retrieved from memory.” . . . Third, the structure of a schema constitutes a basis for ‘filling in’ missing information and thus going beyond the information given. Fourth, schemas provide a means for solving problems by supplying short cuts or heuristics that simplify the problem-solving process. Finally, by generating expectations against which reality is compared, schemas provide a basis for evaluating one’s experiences.<sup>74</sup>

Schemas may be positive, negative, or neutral, accurate or inaccurate. No matter what they are, schemas are a combination of information, emotions, and expectations formed by prior knowledge and affect that in turn influence what new information we actually perceive and how we interpret that perceived information.<sup>75</sup> Everyone has a variety of schemas. For example, role schemas are important frameworks that allow people to quickly categorize the roles a person should play, how s/he should play it, and whether s/he plays it competently.

Gender schemas, formed early in life, are another powerful influence on people. Three basic mental processes reinforce these schema. First, people tend

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<sup>71</sup> See, e.g., VALIAN, *supra* note 2, at 103-05; Pamela Johnston Conover & Stanley Feldman, *How People Organize the Political World: A Schematic Model*, 28 AM. J. POL. SCI. 95 (1984).

<sup>72</sup> Conover & Feldman, *supra* note 71, at 96-97.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> VALIAN, *supra* note 2, at 104-105. Much of the following discussion relies on Valian’s clear explanation of schema, and gender schema in particular,

to equate physical differences with psychological and mental differences.<sup>76</sup> Secondly, people tend to categorize, or generalize, by using examples from the margin. Thus, ultra-feminine behavior shapes our idea of “female” and ultra-masculine that of “male.” Finally, people tend to categorize as either/or, so that a trait is either masculine or feminine; if it is masculine, it cannot be feminine.<sup>76</sup>

Virginia Valian, in her book, *Why So Slow? The Advancement of Women*, contends that these largely unconscious gender schemas held by men and women play a central role in people’s professional lives because they affect our expectations of men and women as well as our evaluation of their work.<sup>77</sup> Moreover, she states that these schema, even if people consciously reject them, continue to function in a manner that invariably overrates men and undervalues women.

Not only do gender schemas influence what others perceive about and expect of women, but they also affect what women expect of themselves, consciously or unconsciously. These expectations, in turn, affect behavior.<sup>78</sup> Thus, expectations and actions tend to reinforce each other and cause women to be uninterested in—or perform poorly in—areas in which men expect them to be either uninterested or perform poorly. This phenomenon is explained more fully below in the sections on stereotype threat and job segregation. The expectations created by gender schema affect men as well as women. For example, one study not only found that male participants chose all the “masculine” tasks when they believed that their partners were women, but that female participants were more likely to choose masculine jobs when their partners in the study did not know that they were women.<sup>79</sup>

Gender schemas, especially when combined with professional and role schemas, contribute to the slow advancement of women in many professional fields, including university professors. Valian’s chapter on women in academia generally describes a situation confirmed by the MIT study and the Reskin and Merritt law school study: women’s under-representation based on salary, rank, and tenure cannot be accounted for solely by differences in productivity or other credentials.<sup>80</sup> Valian’s examples of the clash between gender and professional schemas and how these negatively affect women’s careers are very familiar to many female law professors, who often have experienced some or all of them personally.<sup>81</sup> For example, the more “masculine” (e.g. assertive) a woman acts, the more she is negatively perceived. However, if she acts in traditional “feminine” ways, she is perceived as unprofessional, or less competent. Women are also perceived as inferior leaders, less competent, and so on. Certainly, the study described in this Article demonstrates that the majority of courses women

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<sup>76</sup> *Id.* at 118-20, 112-18 (for various hypotheses about the origins of gender schema).

<sup>77</sup> *Id.* at 2-3.

<sup>78</sup> *Id.* at 148.

<sup>79</sup> *Id.* (citing a 1982 study).

<sup>80</sup> VALIAN, *supra* note 2, at 217-49. See also MIT STUDY, *supra* note 59; Merritt & Reskin, *supra* note 5.

<sup>81</sup> VALIAN, *supra* note 2, at 15-22, 125-44.

choose to teach, or are encouraged to teach by others, fit within traditional gender schemas.

## 2. Stereotype Threat

Many studies demonstrate that people's performance can be affected by other people's expectations of them.<sup>82</sup> The "stereotype threat" theory states that when a member of a stereotyped group is in a situation where she feels that her performance will confirm the negative expectations that others have of the group, she frequently under-performs.<sup>83</sup> The poor performance does not occur because she lacks motivation, achievement, or confidence; rather, the most motivated, accomplished and confident individuals often suffer the most stereotype threat and under-perform.<sup>84</sup>

Every person is a member of some group, and may, at some point, suffer from stereotype threat. The strength of that threat, however, varies according to factors such as how negative the stereotype is, how closely an individual identifies with the stereotyped group, and how closely an individual identifies with the activity to which the stereotype applies.<sup>85</sup> For example, African-American students at Stanford University performed worse than white Stanford students on an intelligence test when the African-American students were told that it was an intelligence test.<sup>86</sup> On the same test, however, the African-American students performed at an equal level with white students when they

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<sup>82</sup> See generally *infra* note 90.

<sup>83</sup> Claude M. Steele, *Stereotype Threat and African-American Student Achievement*, in YOUNG, GIFTED, AND BLACK: PROMOTING HIGH ACHIEVEMENT AMONG AFRICAN-AMERICAN STUDENTS 109, 111 (Theresa Perry et al. eds., 2003) (stereotype threat is "the threat of being viewed through the lens of a negative stereotype, or the fear of doing something that would inadvertently confirm that stereotype"). Claude Steele has been a leader in the development of the "stereotype threat" model. This Article relies greatly on the Steele article because it summarizes in a short space much of the work that has been done previously. See also Claude M. Steele et al., *Contending with Group Image: The Psychology of Stereotype and Social Identity Threat*, 34 ADVANCES IN EXP. SOC. PSYCHOL. 379, 389 (2002) ("Stereotype threat is a situational threat. It arises from situational cues signaling that a negative stereotype about one of one's social identities is now relevant as a possible interpretation for one's behavior and self in the setting. The experience of this threat is not seen to depend on a particular state or trait of the target such as believing in the stereotype or holding low expectations that might result from chronic exposure to the stereotype"). See also Jessi L. Smith & Paul H. White, *An Examination of Implicitly Activated, Explicitly Activated, and Nullified Stereotypes on Mathematical Performance: It's Not Just a Woman's Issue*, 13 SEX ROLES: A J. OF RES. 179 (2002).

<sup>84</sup> Steele, *supra* note 83, at 120. Virginia Woolf recognized the problem long ago. For example, Woolf states that Shakespeare's sister was unlikely to ever produce a poem—however talented she was—because she would be "an unhappy woman, a woman at strife against herself. All the conditions of her life, all her own instincts, were hostile to the state of mind" necessary to produce one. WOOLF, *supra* note 3, at 88.

<sup>85</sup> Steele et al., *supra* note 83, at 390-91.

<sup>86</sup> Steele, *supra* note 83, at 114-15.

were told that the test was not an intelligence test, but a test of problem-solving ability.<sup>87</sup>

Even a member of a group that is not normally stigmatized can be placed in a situation that causes stereotype threat and leads to under-performance. For example, white males who had tested very highly on the Math portion of the SAT under-performed on a math test when they were told that the test was to determine why Asian students did better at math.<sup>88</sup> Similarly, when white male athletes were asked to play golf as a test of “natural athletic ability,” they under-performed vis-à-vis black athletes. In contrast, the African-American athletes under-performed when the test was described to them as measuring “sport strategic intelligence.” The former description placed whites under the stereotype threat that African-Americans are better athletes than whites whereas the latter threatened African-Americans with the stereotype that whites are smarter than African-Americans.<sup>89</sup>

These experiments illustrate that stereotype threat can cause under-performance simply because a member of the negatively stereotyped group is in a situation involving the stereotype. In other words, the threat causes “self-handicapping” by a member of the stigmatized group.<sup>90</sup> Indeed, the more closely a person identifies with the stereotyped field, the more he under-performs.<sup>91</sup> Nothing need be said to trigger the poor performance. Thus, when top math students at the University of Michigan were given a math test, the women performed worse than the men, but performed as well as the men when they were told that women performed as well as men on the test.<sup>92</sup> This demonstrates that not only does the threat cause under-performance, but that the threat disappears in a trusting, supportive environment.<sup>93</sup>

Two responses to stereotype threat may help explain the gender disparity in courses taught by male and female law professors. One explanation is the negative response of many members of the stigmatized group. Specifically, the members avoid situations in which they feel the threat, so as not to endanger their self-esteem.<sup>94</sup> Thus, for example, many females will not take advanced math courses or pursue careers in math or science. Similarly, some female law professors may stay away from certain hard-core and business classes where there is, or they believe there is, a stereotype threat. Instead, they teach courses perceived to be less threatening, such as Poverty Law or Juvenile Law.

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<sup>87</sup> *Id.*

<sup>88</sup> See also Steele et al., *supra* note 83, at 386.

<sup>89</sup> *Id.* at 119-20.

<sup>90</sup> See, e.g., Johannes Keller, *Blatant Stereotype Threat and Women's Math Performance: Self-Handicapping as a Strategic Means to Cope With Obtrusive Negative Performance Expectations*, 13 SEX ROLES: A J. OF RES. 193 (2002).

<sup>91</sup> Steele et al., *supra* note 83, at 395.

<sup>92</sup> Steele, *supra* note 83, at 117-18 (summarizing the study).

<sup>93</sup> *Id.* at 122.

<sup>94</sup> *Id.* at 123 (one response to stereotype threat is to “disidentify with the domains in which they experience the threat”). See also Steele et al., *supra* note 83, at 408-13.

The other response is more positive. Some theorists speculate that stereotype threat harms the stigmatized group, but benefits the group that is not stigmatized. Thus, for example, some researchers hypothesize that men benefit from a gender stereotype that stigmatizes women because it “inflates” their confidence.<sup>95</sup> Not only can gender schemas influence men to enter stereotypically male fields, but stereotype threat also can enhance their performance in those fields, measured by student and peer evaluation. Male performance in the field is enhanced by confidence that they will perform well. Of course the same positive benefit may also occur for women. Thus, stereotype threat can reinforce gender schema so that women teach courses that are female, such as Juvenile Law or Poverty Law, because stereotypically they do well here.

### **3. Gender Schema and Stereotype Threat as Partial Explanations of Gender Segregation of Courses Taught**

Gender schemas and stereotype threat help explain the specific patterns of gender segregation found in this study. Courses with a female disparity—such as Juvenile Law, Poverty Law, and Legal Writing and Research—generally fit within a typical gender schema of “feminine.” These courses are less central to the core of law and law school, less prestigious, and often associated with traditionally female traits such as care and relationships. Similarly, men are over-concentrated in the most traditional, and hence most “masculine” courses such as Constitutional Law, Evidence, Corporations, and Government Contracts. Men are also over-concentrated in “hot” or prestigious courses such as Law and Economics and Constitutional Law.

Since the legal profession and legal thought are frequently characterized as “male,” women teaching female courses may minimize tensions caused by the clash between the job they actually do and the job expected of them. Moreover, given stereotype threat, choosing these gender friendly courses can magnify their chances of performing well in the job. As a result, women may voluntarily (though often unconsciously) gravitate towards feminine courses where they will feel less internal conflict and external pressure. Women may also feel steered to those courses (again often unconsciously) by the administration or peers and mentors.

Courses that showed substantial changes in gender distortion over the time period, but did not yet have a statistically significant distortion, will attain that status (i.e., a gender disparity) if these changes continue apace. The identity of these courses is generally predictable under the concepts of gender schema and stereotype threat. Education Law, which switched from a slightly higher percentage of males to a slightly higher concentration of females, falls within a traditionally acceptable realm of female interests. Legal Method, which also had a large increase in female professors, also could be described as falling within the female realm in the sense that the course is not considered a core course. In contrast, female-dominated courses that became more masculine (including

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<sup>95</sup> Smith & White, *supra* note 83, at 185.



Entertainment Law and Estate and Gift Taxation) may have done so because the courses themselves became less identified with the female realm and more identified with masculine interests.

Several factors may cause the shift from female to masculine to occur. The course may become more attractive to men because the demand for it increases. This increase makes the course more central to the law school enterprise and more prestigious in the sense that it may provide more opportunities for advancement. Concurrently, a course may lose some of its feminine, or caring aspects, as government regulation of the area increases. Government regulation might not only increase the attractiveness of the course to men, but also simultaneously decrease its attraction for women. Health Care Law is an example of this defeminizing/masculinizing phenomenon.

### B. Consequences of Gender Disparity of Courses Taught

Most gender segregation harms the disfavored group.<sup>96</sup> Indeed, the mere fact that women dominate an occupation may lower its prestige.<sup>97</sup> The harm however, is not limited to those women with the less prestigious jobs. In the law school setting, many commentators have documented how gender segregation adversely affects all professors (male and female alike) as well as law students and the development of the law.<sup>98</sup> Female professors, for example, may find professional advancement more difficult if the courses they teach are seen as softer and less central to the legal enterprise. Male professors lose opportunities

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<sup>96</sup> In certain instances, however, gender segregation can be positive, especially if the segregation results from the (relatively) free choice of the disfavored group, if it provides opportunities for members of the disfavored group, and/or increases their confidence and achievement levels such as in sports. *See, e.g.,* Ellen Goodman, *Modern Ladies Cherish Tee-Time*, *TIMES PICAYUNE*, May 24, 2003, at B7.

<sup>97</sup> *See, e.g.,* Neumann, *supra* note 5, at 349 (citing Modern Language Association study showing that work was undervalued if the evaluator knew it was performed by women). By contrast, the mere fact that men dominate a field increases its prestige. Merritt & Reskin, *supra* note 5, at 267 n.204 (citing a large body of social science research on male-domination in a field, including Barbara F. Reskin, *Bringing the Men Back In: Sex Differentiation and the Devaluation of Women's Work*, 2 *GENDER & SOC'Y* 58, 63-64 (1988)).

<sup>98</sup> *See, e.g., supra* note 5; Deborah Rhode, *Whistling Vivaldi: Legal Education and the Politics of Progress*, 23 *N.Y.U. REV. L. & SOC. CHANGE*, 217, 219-22 (1997) (cataloguing forms of bias and listing citations); Lisa A. Wilson & David H. Taylor, *Surveying Gender Bias at One Midwestern Law School*, 9 *J. GENDER, SOC. POL'Y & L.* 251 (2001). *See also* JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 250-53 (2000); 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, 95 (1996) (surveying women's alienation at Chapman University School of Law, a new law school that opened with nine full-time faculty members, 44.4% of whom were women, plus five administrators with faculty status, three of whom were women, making women 50% of all faculty members). Fischer also included citations to some of the prior studies about the link between female alienation and low percentage of faculty. *Id.* at 87.

to be enriched by the experiences and views of the opposite sex and are stereotyped themselves which limits their own opportunities.

Students also suffer. If the female faculty is primarily teaching less prestigious courses, the role model they present to female students may be a discouraging one. For example, seeing women primarily teaching only in traditional women's areas may narrow female student's and lawyer's aspirations for future careers, and possibly confirm their suspicion that women do not succeed in certain types of practices. Thus, women teaching less prestigious areas of the law may help perpetuate the over-representation of women practicing in those areas.<sup>99</sup>

For male and female students alike, seeing women faculty disproportionately in less prestigious, "softer," or more "caring" courses often re-confirms the students' preconceived notions that female professors are not quite as qualified as their male counterparts who teach "real" courses and possess valued knowledge and ability. Many students already believe that female professors do not quite make the grade because they are perceived as less competent, less smart, and too emotional.<sup>100</sup> Even positive evaluations of female professors are often for non-legal attributes, such as "being approachable" or "helpful." Male professors are praised for coveted legal qualities such as "masters of their subject matter."<sup>101</sup> The often unconscious belief that law is essentially a male domain is reinforced by students' first-year experiences. In the first year students are more likely to have male professors for substantive courses and a female professor for Legal Research and Writing, a generally disliked course not perceived as a "real" course. Moreover, the fact that women are more likely to teach Juvenile Law than Corporate Finance, and more likely to teach Family Law than Anti-trust or Constitutional Law, further buttresses the belief that women faculty are second-class faculty.

Finally, the segregation of women professors into less prestigious, softer, less hardcore, or more peripheral courses influences the development of the law. The concentration of women in these fields keeps them at the margins. This marginalization in turn retards the full incorporation of feminist viewpoints and theory into standard textbooks. Certainly, the contrast between the incorporation of Law and Economics (an almost completely male-dominated course) and Feminist Theory (taught almost entirely by female teachers in Women and the Law), is striking.<sup>102</sup>

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<sup>99</sup> See, e.g., Kay, *supra* note 2, at 307; Gaber, *supra* note 4, at 215-16, 250.

<sup>100</sup> See, e.g., Neumann, *supra* note 5, at 349-50; Farley, *supra* note 11, at 336, 340 (women are presumed less competent than men, and even the same behavior is interpreted less favorably in women than in men).

<sup>101</sup> Farley, *supra* note 11, at 339-40.

<sup>102</sup> See e.g., Levit, *supra* note 5, at 782-83 (although textbooks incorporate more gender issues than before, law school courses continue to be largely sex segregated by content. Casebooks rarely contain feminist critiques such as the "no duty to act" rule in Torts). The influence of Law and Economics, in contrast, has been vast. See, e.g., Landes & Posner, *supra* note 36, at 385.

### III. CONCLUSION

Gender segregation in law schools, with women occupying the less prestigious positions, is part of a pattern of job segregation that occurs in many occupations. This study's longitudinal investigation of one particular aspect—the courses law professors teach—discovered that this gender segregation is much more widespread than previously thought, and is growing in some courses. These findings are contrary to expectations that disparities would narrow as the proportion of women law professors increased. At statistically significant levels, women professors disproportionately teach less prestigious, softer “female” courses while men teach more prestigious, harder “male” courses. This stratification has increased between 1990-1991 and 2002-2003, despite the fact that the overall proportion of women professors increased almost 50% during this time period. Thus, even as the proportions of male and female professors approach parity, more courses had gender disparities (i.e. statistically significant gender distortions) than in previous years, and 22.8% of courses showed a statistically significant widening of gender distortions, whereas only 5% showed a statistically significant narrowing.

The findings suggest that as more women enter law teaching, the gender identity of many courses strengthens rather than weakens. If outside factors—such as the prestige of, or demand for, a course remain unchanged—identity strengthening may occur in one of three ways. First, many courses with both an established gender identity and gender disparity experienced a statistically significant widening of the disparity, thus further emphasizing the course's gender identity. This widening occurred in Juvenile Law (female) and Corporate Finance (male). Second, some courses that had a large gender disproportion in 1990-1991, experiencing a widening of that disproportion. As a result, by 2002-2003, there was a statistically significant disparity in courses such as Products Liability (male) and Poverty Law (female). Finally, in other courses, such as Legal Profession or Legal Method, statistically significant decreases in the proportion of men teaching these courses indicate that as more women are teaching, men can leave these inherently “female” fields to women.

If outside factors changed so that a course became more “male” due to an increase in prestige or demand, some courses, such as Health Care Law and ADR, experienced a concomitant statistical increase in the proportion of men teaching that course. Although these courses do not yet show a gender disparity, or in the case of Health Care Law, a shift in gender disparity, the large increase in the numbers of men teaching these courses suggests that over time there may be a concomitant statistical increase in the proportion of men teaching these courses. If this trend continues, the end result will be that large numbers of courses may be taught predominantly by one sex and become identified with that sex.

These three trends—the increase in the number of courses with a gender disparity, the widening of the disparity, and the re-alignment of gender proportions with gender identities—indicate increased segregation by gender even as the percentage of female law professors increases. Even if total segregation does not occur, the existing pattern of gender disparity, with women

disproportionately teaching softer, less core courses, and men teaching traditional courses, strongly suggests that, to a large extent, law schools remain male institutions.<sup>103</sup>

Women must be completely integrated into the legal academy, not just for their own benefit but in order for the law to develop fully. For integration to occur, women must move, as Professor Melissa Cole has stated, from the “periphery” to being simply law professors at the core of law school like male professors.<sup>104</sup> However, as long as women continue to teach the peripheral courses, they will remain at the margins. In 1997, Professors Merritt and Reskin warned that “any sex . . . bias in teaching assignments should raise alarm.”<sup>105</sup> At the time they wrote the extent of the bias was not fully known. With this study, the alarm should now be blaring at full alert. Until women proportionately teach the full range of law school courses, they will not obtain equal status with men. Using an analogy from Immigration Law (a disproportionately female-taught course), women need to move from green card to full citizenship status.

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<sup>103</sup> See, e.g., Steele et al., *supra* note 83, at 420-21. (gender specialization in the workplace, such as women under-represented in quantitative fields, “signals” importance of a particular “social identity” to the institution).

<sup>104</sup> Melissa Cole, *Struggling to Enjoy Ourselves or Enjoying the Struggle? One Perspective from the Newest Generation of Women Law Professors*, 10 UCLA WOMEN’S L.J. 321, 331, 333 (2000).

<sup>105</sup> Merritt & Reskin, *supra* note 5, at 268.

## APPENDIX 1

**GENDER DISTORTION FROM THE TOTAL PROPORTION OF  
WOMEN IN LAW IN 1990-1991 AND 2002-2003**

(Italic areas are too small for statistical significance)

Course	1990-1991 (.0217 women)			2002-2003 (0.318 women)			Change Across Years	
	Proportion Women	Distortion	Sig.	Proportion Women	Distortion	Sig.	More Distortion	Sig. Change
Accounting	0.095	-0.122	**	0.111	-0.207	**	Yes	
Administrative Law	0.108	-0.109	**	0.181	-0.137	**	Yes	
Admiralty	0.039	-0.178	**	0.061	-0.257	**	Yes	
ADR	0.232	0.015		0.318	0.000			Yes
Agency and Partnership	0.121	-0.096	**	0.183	-0.135	**	Yes	
<i>Aging and the Law<sup>106</sup></i>	<i>0.600</i>	<i>0.329</i>	<i>*</i>	<i>0.467</i>	<i>0.149</i>			<i>N/A</i>
<i>Agricultural Law</i>	<i>0.192</i>	<i>-0.025</i>		<i>0.273</i>	<i>-0.045</i>		Yes	<i>N/A</i>
Antitrust Law	0.079	-0.138	**	0.118	-0.200	**	Yes	
<i>Aviation and Space</i>	<i>0.000</i>	<i>-0.217</i>		<i>0.100</i>	<i>-0.218</i>		Yes	<i>N/A</i>
Business Planning	0.165	-0.052		0.228	-0.090	**	Yes	
Civil Procedure	0.193	-0.024		0.304	-0.014			
Civil Rights	0.291	0.074	**	0.360	0.042	*		
Clinical Teaching	0.279	0.062	**	0.454	0.136	**	Yes	Yes
Commercial Law	0.172	-0.045	**	0.244	-0.074	**	Yes	Yes
Commercial Paper	0.178	-0.039		0.255	-0.063	*	Yes	
Community Property	0.323	0.106	*	0.475	0.157	**	Yes	
Comparative Law	0.116	-0.101	**	0.180	-0.138	**	Yes	
Computers and the Law	0.156	-0.061		0.289	-0.029			
Consumer Law	0.155	-0.062		0.185	-0.133	**	Yes	
Conflict of Laws	0.124	-0.093	**	0.191	-0.127	**	Yes	
Constitutional Law	0.150	-0.067	**	0.196	-0.122	**	Yes	Yes
Contracts	0.178	-0.039	**	0.261	-0.057	**	Yes	
Corporate Finance	0.106	-0.111	**	0.127	-0.191	**	Yes	Yes
Corporations	0.161	-0.056	**	0.233	-0.085	**	Yes	Yes
Creditors' Debtors' Rights	0.140	-0.077	**	0.188	-0.130	**	Yes	Yes
Criminal Justice	0.169	-0.048	**	0.270	-0.048	**		
Criminal Procedure	0.156	-0.061	**	0.242	-0.076	**	Yes	
Education Law	0.182	-0.035		0.328	0.010			

<sup>106</sup> Values for Aging and the Law are for 1996-97 when women comprised 27.1% of professors.

Course	1990-1991 (.0217 women)			2002-2003 (0.318 women)			Change Across Years	
	Proportion Women	Distortion	Sig.	Proportion Women	Distortion	Sig.	More Distortion	Sig. Change
<i>Employee Benefit Plans</i>	0.400	0.183		0.429	0.111			N/A
Employment Discrimination	0.401	0.184	**	0.457	0.139	**		
<i>Entertainment Law</i>	0.278	0.061		0.190	-0.128		Yes	N/A
Environmental Law	0.132	-0.085	**	0.214	-0.104	**	Yes	
Equity	0.129	-0.088		0.154	-0.164	*	Yes	
Estate and Gift Taxation	0.220	0.003		0.250	-0.068		Yes	Yes
Estate Planning	0.169	-0.048		0.236	-0.082	*	Yes	
Estates & Trusts	0.275	0.058	**	0.390	0.072	**	Yes	
Evidence	0.144	-0.073	**	0.219	-0.099	**	Yes	
Family Law	0.410	0.193	**	0.588	0.270	**	Yes	Yes
Federal Courts	0.159	-0.058	**	0.245	-0.073	**	Yes	
Financial Institutions	0.188	-0.030		0.273	-0.045		Yes	
<i>Government Contracts</i>	0.034	-0.183	*	0.074	-0.244	**	Yes	N/A
Health Care Law	0.373	0.156	**	0.386	0.068	*		Yes
Immigration Law	0.228	0.011		0.436	0.118	**	Yes	Yes
Insurance	0.102	-0.115	**	0.132	-0.186	**	Yes	
Intellectual Property	0.183	-0.034		0.251	-0.067	**	Yes	
International Law	0.101	-0.116	**	0.234	-0.084	**		
International Organizations	0.083	-0.134	*	0.179	-0.139	**	Yes	
International Transactions	0.113	-0.104	**	0.180	-0.138	**	Yes	
Introduction to Law	0.140	-0.077		0.230	-0.088	*	Yes	
<i>Judicial Administration</i>	0.080	-0.137		0.269	-0.049			N/A
Jurisprudence	0.105	-0.112	**	0.225	-0.093	**		
Juvenile Law	0.426	0.209	**	0.535	0.217	**	Yes	
Labor Law	0.206	-0.011		0.268	-0.050		Yes	Yes
Land Use Planning	0.168	-0.049		0.233	-0.085	**	Yes	
Law and Economics	0.064	-0.153	**	0.083	-0.235	**	Yes	
Law and Medicine	0.269	0.052		0.400	0.082	**	Yes	
Law and Psychiatry	0.172	-0.045		0.184	-0.134	**	Yes	Yes
Law and Science	0.061	-0.156	**	0.211	-0.107	*		
Law and Social Science	0.147	-0.070	*	0.249	-0.069	*		
Law Office Management	0.140	-0.077	*	0.217	-0.101	*	Yes	
Legal History	0.116	-0.101	**	0.162	-0.156	**	Yes	Yes
Legal Method	0.218	0.001		0.350	0.032		Yes	Yes
Legal Profession	0.169	-0.048	**	0.301	-0.017			Yes
Legal Research and Writing	0.372	0.155	**	0.535	0.217	**	Yes	Yes
Legislation	0.146	-0.071	*	0.264	-0.054			
Local Government	0.142	-0.075	*	0.212	-0.106	**	Yes	
Mass Communications Law	0.108	-0.109		0.179	-0.139	**	Yes	

Course	1990-1991 (.0217 women)			2002-2003 (0.318 women)			Change Across Years	
	Proportion Women	Distortion	Sig.	Proportion Women	Distortion	Sig.	More Distortion	Sig. Change
Military Law	0.031	-0.186	*	0.147	-0.171	*		<i>N/A</i>
Native American Law	0.157	-0.060		0.304	-0.014			
Natural Resources	0.126	-0.091	*	0.216	-0.102	**	Yes	
Oil and Gas	0.119	-0.098		0.132	-0.186	*	Yes	
Poverty Law	0.215	-0.002		0.514	0.196	**	Yes	Yes
Products Liability	0.182	-0.035		0.205	-0.113	**	Yes	Yes
Property	0.235	0.018		0.321	0.003			Yes
Real Estate Transactions	0.155	-0.062	*	0.226	-0.092	**	Yes	
Regulated Industries	0.111	-0.106	**	0.127	-0.191	**	Yes	Yes
Remedies	0.193	-0.024		0.282	-0.036		Yes	
Securities Regulation	0.154	-0.063	*	0.273	-0.045			
Social Legislation	0.264	0.047		0.424	0.106	*	Yes	
Sports Law	0.036	-0.181	**	0.143	-0.175	**		
Taxation, Federal	0.169	-0.048	**	0.222	-0.096	**	Yes	Yes
Taxation, State and Local	0.151	-0.066		0.255	-0.063			
Torts	0.186	-0.031	*	0.275	-0.043	**	Yes	
Trade Regulation	0.046	-0.171	**	0.143	-0.175	*	Yes	
Trial and Appellate Advocacy	0.226	0.009		0.321	0.003			
Water Rights	0.097	-0.120	*	0.176	-0.142	*	Yes	
Women and the Law	0.935	0.718	**	0.930	0.612	**		
Workers' Compensation	0.136	-0.081		0.200	-0.118		Yes	<i>N/A</i>

\*  $p \geq .05$  (95% Confidence Level).

\*\*  $p \geq .01$  (99% Confidence Level).

## APPENDIX 2

**COURSES WITH STATISTICALLY SIGNIFICANT DEVIATIONS  
FROM THE TOTAL PROPORTION OF WOMEN LAW PROFESSORS  
IN 1990-1991 AND 2002-2003**

**Table 1**  
**1990-1991 Courses with Absolute Male Disparity<sup>107</sup>**  
(Courses presented in descending order.)

Course	Proportion women	Distortion
Military Law	0.031	0.186
Sports Law	0.036	-0.181
Admiralty	0.039	-0.178
Trade Regulation	0.046	-0.171
Law and Science	0.061	-0.156
Law and Economics	0.064	-0.153
Antitrust Law	0.079	-0.138
International Organizations	0.083	-0.134
Accounting	0.095	-0.122
Water Rights	0.097	-0.120
International Law	0.101	-0.116
Insurance	0.102	-0.115
Jurisprudence	0.105	-0.112
Corporate Finance	0.106	-0.111
Administrative Law	0.108	-0.109
Regulated Industries	0.111	-0.106
International Transactions	0.113	-0.104
Comparative Law	0.116	-0.101
Legal History	0.116	-0.101
Agency and Partnership	0.121	-0.096
Conflict of Laws	0.124	-0.093
Natural Resources	0.126	-0.091
Environmental Law	0.132	-0.085
Law Office Management	0.140	-0.077
Creditors' Debtors' Rights	0.140	-0.077

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<sup>107</sup> Men were statistically over-represented. Women constituted .217 of all faculty.



<b>Course</b>	<b>Proportion women</b>	<b>Distortion</b>
Local Government	0.142	-0.075
Evidence	0.144	-0.073
Legislation	0.146	-0.071
Law and Social Science	0.147	-0.070
Constitutional Law	0.150	-0.067
Securities Regulation	0.154	-0.063
Real Estate Transactions	0.155	-0.062
Criminal Procedure	0.156	-0.061
Federal Courts	0.159	-0.058
Corporations	0.161	-0.056
Criminal Justice	0.169	-0.048
Legal Profession	0.169	-0.048
Taxation, Federal	0.169	-0.048
Commercial Law	0.172	-0.045
Contracts	0.178	-0.039
Torts	0.186	-0.031

**Table 1A**  
**1990-1991 Courses with Absolute Female Disparity<sup>108</sup>**  
(Courses presented in descending order)

<b>Course</b>	<b>Proportion women</b>	<b>Distortion</b>
Women and the Law	0.935	0.718
Juvenile Law	0.426	0.209
Family Law	0.410	0.193
Employment Discrimination	0.401	0.184
Health Care Law	0.373	0.156
Legal Research and Writing	0.372	0.155
Community Property	0.323	0.106
Civil Rights	0.291	0.074
Clinical Teaching	0.279	0.062
Estates & Trusts	0.275	0.058

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<sup>108</sup> Women were statistically significantly over-represented.

**Table 2**  
**2002-2003 Courses with Absolute Male Disparity**<sup>109</sup>  
 (Courses presented in Descending order of concentration)

Course	Proportion Women	Distortion	Sig.
Admiralty	0.061	-0.257	**
Law and Economics	0.083	-0.235	**
Accounting	0.111	-0.207	**
Antitrust Law	0.118	-0.200	**
Corporate Finance	0.127	-0.191	**
Regulated Industries	0.127	-0.191	**
Insurance	0.132	-0.186	**
Oil and Gas	0.132	-0.186	*
Sports Law	0.143	-0.175	**
Trade Regulation	0.143	-0.175	*
Military Law	0.147	-0.171	*
Equity	0.154	-0.164	*
Legal History	0.162	-0.156	**
Water Rights	0.176	-0.142	*
International Organizations	0.179	-0.139	**
Mass Communications Law	0.179	-0.139	**
Comparative Law	0.180	-0.138	**
International Transactions	0.180	-0.138	**
Administrative Law	0.181	-0.137	**
Agency and Partnership	0.183	-0.135	**
Law and Psychiatry	0.184	-0.134	**
Consumer Law	0.185	-0.133	**
Creditors' Debtors' Rights	0.188	-0.130	**
Conflict of Laws	0.191	-0.127	**
Constitutional Law	0.196	-0.122	**
Products Liability	0.205	-0.113	**
Law and Science	0.211	-0.107	*
Local Government	0.212	-0.106	**
Environmental Law	0.214	-0.104	**
Natural Resources	0.216	-0.102	**
Law Office Management	0.217	-0.101	*
Evidence	0.219	-0.099	**

<sup>109</sup> Men were statistically significantly over-represented. Women constituted .318 of all faculty.

Course	Proportion Women	Distortion	Sig.
Taxation, Federal	0.222	-0.096	**
Jurisprudence	0.225	-0.093	**
Real Estate Transactions	0.226	-0.092	**
Business Planning	0.228	-0.090	**
Introduction to Law	0.230	-0.088	*
Corporations	0.233	-0.085	**
Land Use Planning	0.233	-0.085	**
International Law	0.234	-0.084	**
Estate Planning	0.236	-0.082	*
Criminal Procedure	0.242	-0.076	**
Commercial Law	0.244	-0.074	**
Federal Courts	0.245	-0.073	**
Law and Social Science	0.249	-0.069	*
Intellectual Property	0.251	-0.067	**
Commercial Paper	0.255	-0.063	*
Contracts	0.261	-0.057	**
Criminal Justice	0.270	-0.048	**
Torts	0.275	-0.043	**

\*  $p \geq .05$  (95% Confidence Level).

\*\*  $p \geq .01$  (99% Confidence Level).

**Table 2A**  
**2002-2003 Courses with Absolute Female Disparity<sup>110</sup>**  
 Courses presented in descending order.

Course	Proportion Women	Distortion	Sig.
Women and the Law	0.930	0.612	**
Family Law	0.588	0.270	**
Juvenile Law	0.535	0.217	**
Legal Research and Writing	0.535	0.217	**
Poverty Law	0.514	0.196	**
Community Property	0.475	0.157	**
Employment Discrimination	0.457	0.139	**
Clinical Teaching	0.454	0.136	**
Immigration Law	0.436	0.118	**
Social Legislation	0.424	0.106	*
Law and Medicine	0.400	0.082	**
Estates & Trusts	0.390	0.072	**
Health Care Law	0.386	0.068	*
Civil Rights	0.360	0.042	*

\*  $p \geq .05$  (95% Confidence Level).

\*\*  $p \geq .01$  (99% Confidence Level).

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<sup>110</sup> Women were statistically significantly over-represented.

## APPENDIX 3

**Table 3A**  
**Categories (Excluding First Year)<sup>111</sup>**

<b>Category</b>	<b>Courses</b>
<b>Family Law</b>	Family Law Creditors' Debtors' Rights Conflict of Laws Employment Discrimination Law and Psychiatry Estates & Trusts Estate and Gift Taxation Estate Planning Women and the Law Health Care Law ADR Juvenile Law Community Property Aging and the Law
<b>Government Regulation</b>	Administrative Law Antitrust Law Employment Discrimination Labor Law Environmental Law Immigration Law Securities Regulation Health Care Law Regulated Industries Local Government Insurance Mass Communications Law Native American Law Sports Law Products Liability Trade Regulation Land Use Planning Admiralty

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<sup>111</sup> Categories were devised by looking at how several school catalogs characterized their concentrations and by looking at what several states tested on their bar exams. *See, e.g., supra* note 32.

	Financial Institutions
	Intellectual Property
	Consumer Law
	Government Contracts
<b>International Law</b>	International Law
	International Organizations
	International Transactions
	Comparative Law
<b>Labor &amp; Employment</b>	Antitrust Law
	Employee Benefit Plans
	Employment Discrimination
	Labor Law
	Entertainment Law
	Sports Law
	Workers' Compensation
	Agricultural Law
	Education Law
	Aviation and Space
<b>Commercial</b>	Contracts
	Commercial Law
	Commercial Paper
	Creditors' Debtors' Rights
	Real Estate Transactions
	Products Liability
	Consumer Law
<b>Corporations</b>	Agency and Partnership
	Corporations
	Corporate Finance
	Financial Institutions
	Securities Regulation
	Antitrust Law
	Business Planning
<b>Property</b>	Property
	Real Estate Transactions
	Intellectual Property
	Land Use Planning
	Estates & Trusts
	Natural Resources
	Water Rights

<b>Environmental Law</b>	Environmental Law Oil and Gas Natural Resources Water Rights
<b>Bar Courses</b>	Criminal Justice Criminal Procedure Constitutional Law Torts Contracts Commercial Law Property Evidence
<b>Bar Essay</b>	Family Law Corporations Commercial Paper Commercial Law Legal Profession Agency and Partnership Estates & Trusts



**Table 3B**  
**First-Year Courses**

Seven courses are commonly taught in the first year at most law schools: Civil Procedure; Criminal Justice; Legal Research/Writing; Constitutional Law; Contracts; Property; and Torts.

**Variation 1: All Seven First-Year Courses**

1990-1991 (0.271 women)		2002-2003 (0.318 women)		Across Years	
Proportion of Women in These Courses	1990-1991 Disparity	Proportion of Women in These Courses	2002-2003 Disparity	Change in Disparity	Significant?
0.2012	-0.0158**	0.2946	-0.0234**	Widen	Yes**

**Variation 2: Six Substantive Courses (No Legal Writing)<sup>112</sup>**

1990-1991 (0.271 women)		2002-2003 (0.318 women)		Across Years	
Proportion of Women in These Courses	1990-1991 Disparity	Proportion of Women in These Courses	2002-2003 Disparity	Change in Disparity	Significant?
0.1821	-0.0349**	0.2664	-0.0516**	Widen	Yes**

**Variation 3: 5 Substantive Courses  
(No Constitutional Law or Legal Writing)<sup>113</sup>**

1990-1991 (0.271 women)		2002-2003 (0.318 women)		Across Years	
Proportion of Women in These Courses	1990-1991 Disparity	Proportion of Women in These Courses	2002-2003 Disparity	Change in Disparity	Significant?
0.1907	-0.0263**	0.2854	-0.0326**	Widen	No

\*\* Significant at the 99% confidence level ( $p \geq .01$ ).

<sup>112</sup> Legal Writing, the only procedural course, was the only course to have a female disparity, which in fact increased over time.

<sup>113</sup> Since Constitutional Law had a large male disparity, this course is eliminated from this variation to get a better picture of the remaining substantive courses.

**Table 3C**  
**Categories with a Gender Disparity**

Category	1990-1991		Category	2002-2003 <sup>114</sup>	
	Proportion Women to Men in Category	Gender Disparity		Proportion Women to Men in Category	Gender Disparity
International Law	0.108	-0.109	International Law	0.200	-0.118
Environmental Law	0.125	-0.093	Corporations	0.203	-0.115
Corporations	0.134	-0.083	Environmental Law	0.206	-0.112
<b>Family Law<sup>115</sup></b>	<b>0.288</b>	<b>0.071</b>	<b>Family Law</b>	<b>0.412</b>	<b>0.094</b>
Government Regulation	0.152	-0.065	Government Regulation	0.239	-0.080
Commercial	0.169	-0.048	Commercial	0.240	-0.078
Bar Courses	0.173	-0.044	Bar Courses	0.252	-0.066
Labor and Employment	—	—	Labor and Employment	0.286	-0.032
Property Law	—	—	Property Law	0.295	-0.023
Essay Courses	—	—	Essay Courses	—	—

— Category did not have a statistically significant gender disparity.

<sup>114</sup> The gender distortion is greater in 2002-2002 than in 1990-1991 across all categories.

<sup>115</sup> Family Law is the only category in which more women than men teach the courses.

**Table 3D**  
**Adjusted\* Categories with a Gender Disparity<sup>116</sup>**

Category	1990-1991		Category	2002-2003 <sup>117</sup>	
	Proportion Women to Men in Category	Gender Disparity		Proportion Women to Men in Category	Gender Disparity
International Law	0.108	-0.109	<b>Family Law</b>	<b>0.449</b>	<b>0.131</b>
<b>Family Law<sup>118</sup></b>	<b>.318</b>	<b>.101</b>	Corporations	0.189	-0.129
Environmental Law	0.116	-.101	Environmental Law	0.193	-0.125
Corporations	0.122	-0.096	International Law	0.200	-0.118
Government Regulation	0.160	-0.057	Commercial	0.226	-0.093
Commercial	0.165	-0.052	Government Regulation	0.247	-0.071
Bar Courses	0.173	-0.044	Bar Courses	0.252	-0.066
Labor and Employment	—	—	Property Law	0.280	-0.038
Property Law	—	—	Labor and Employment	0.286	-0.032
Essay Courses	—	—	Essay Courses	—	—

— Category did not have a statistically significant gender disparity.

<sup>116</sup> One hypothesis to explain the distortion is that women disproportionately taught basic or introductory courses, as opposed to more advanced courses in the same area. To test this I adjusted certain categories in Table 3B to eliminate the basic course. The adjustments are as follows:

Commercial Law category excludes Contract Law.

Corporations category excludes both Agency & Partnership and Corporations.

Environmental Law category excludes Environmental Law.

Government Regulation excludes Administrative Law.

Property category excludes Property.

In both 1990-1991 and 2002-2003 all four of these categories showed an increased gender distortion with a greater proportion of men teaching. Moreover, the amount of disproportion was greater than the disproportion that existed when the introductory courses were included for all but Government Regulation. See Table 3B.

For the Family Law category, the only category that was statistically significantly female, I constructed a Family Law category consisting of only six basic courses: Family Law, Estates & Trusts, Estate & Gift Taxation, Estate Planning, Juvenile Law, and Aging & the Law. This increased the gender distortion as compared to the larger category in Table 3B.

<sup>117</sup> The gender distortion is greater in 2002-2003 than in 1990-1991 across all categories.

<sup>118</sup> Family Law is the only one of these categories that has more women than men teaching.

**APPENDIX 4****Courses with Statistically Significant Changes in Gender Distortion  
Between 1990-1991 and 2002-2003**

ADR\*  
Clinical Teaching  
Commercial Law  
Constitutional Law  
Corporate Finance  
Corporations  
Creditors' Debtors' Rights  
Estate and Gift Taxation  
Family Law  
Health Care Law\*  
Immigration Law  
Labor Law  
Legal History  
Legal Method  
Legal Profession\*  
Legal Research and Writing  
Poverty Law  
Products Liability  
Property\*  
Psychiatry & the Law  
Regulated Industries  
Taxation, Federal

\* Distortion significantly decreases

## APPENDIX 5

### Relative Measure

Previous Appendices measured gender distortions in absolute terms. Appendix 5 uses a relative measurement, sometimes called an Index of Representation, which has been used in some studies to identify when a job or occupation is over or under-represented by a particular demographic group. This measure compares the proportion of professors who are women in a particular course to the overall proportion of women professors for a year. Assume, for example, that in Year 1 the overall proportion of women professors was 0.20 but only 0.10 of professors teaching course X were women. The relative distortion is  $10/20 = 0.50$ . That is, the proportion of women teaching X is only 50% of the overall proportion of women law professors. The relative distortion increases the farther away from one it gets.

To determine whether gender distortion had changed over time using this method, two years would be compared. Continuing the earlier example, assume that in Year 2, 0.12 of X professors are women but 0.30 of all professors are women. The relative distortion is  $12/30 = 0.40$ . The relative distortion has increased because it is farther away from 1. In other words, the percentage of women teaching X has now declined to only 40% of the overall average percentage.

There is no way to determine statistical significance under the relative measure. Consequently, defining over or under-representation using the relative measure test is arbitrary. In 1993, Suzanne Model, one of the first to use this measure in the context of analyzing racial and ethnic composition in various occupations used the term “niche” to refer to “the overrepresentation of ethnic and racial minorities in particular jobs.”<sup>119</sup> Since there is no test for statistical significance, she arbitrarily set a very high bar, stating that overrepresentation exists only “if the percentage of workers who are group members is at least one-and-a-half times greater than the group’s percentage in the work force.”<sup>120</sup> Others, following Model’s lead, have used the same percentage.<sup>121</sup> This high bar may be appropriate to determine whether an occupation, or course in the context of this study, has become a “niche” in the sense that it has become identified with a particular gender. However, it seems overly narrow in terms of determining which courses have an over-representation of one gender.

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<sup>119</sup> Suzanne Model, *The Ethnic Niche and the Structure of Opportunity: Immigrants and Minorities in New York City*, in THE “UNDERCLASS” DEBATE: VIEWS FROM HISTORY 164 (Michael B. Katz ed., 1993).

<sup>120</sup> *Id.* at 164 n.8. Model also notes that “very small groups need more skewed distributions . . . than do very large groups” to be a niche. *Id.*

<sup>121</sup> See, e.g., ROGER WALDINGER, STILL THE PROMISED CITY?: AFRICAN-AMERICANS AND NEW IMMIGRANTS IN POSTINDUSTRIAL NEW YORK 340 n.4 (1996).

As described in the text, this study focuses on absolute disparity because this measure produces statistically significant results whereas the relative measure does not. However, there are other reasons to focus on absolute disparity. Taken alone, the absolute measure may be too pessimistic about increasing disparity, and the relative measure too optimistic about narrowing disparity. The absolute measure presents a realistic picture of the current disparity as opposed to the past, but ignores a trend, slow though it may be, to equality in the future. On the other hand, the relative measure shows that the percentage of women in X is getting closer to equaling the overall percentage of women law professors, but the measure hides the inequality in the present and perhaps encourages people to underestimate how long it will take to reach equality. Given the seriousness of the problem, I believe it is better to err on the pessimistic side than to become overly optimistic.

The relative measure is most misleading for courses that already had an over-representation of women in 1990-1991, because it ignores the fact that although some courses show a narrowing of gender disparity over time, the courses have become increasingly female. For example, in 1990, 42.6% of those teaching Juvenile Law were women. This percentage rose to 53.5% by 2002, resulting in a widening of absolute female disparity (from 0.209 to 0.217). Since the rate of increase in Juvenile Law (25.6%) was less than the overall percentage increase in women professors (46.5%), the relative disparity decreased from 196.3% to 168.2%. Certainly the relative measurement reflects the reality that the over-representation of women in Juvenile Law is less than it was before, but the measure ignores the reality that any student who now takes the course is more likely than not to have a female professor. If a tipping phenomenon exists, then a majority female course may so closely identify the course with women that ghettoization will happen. Women and the Law is another example of the problem with relative disparity. The relative measurement shows substantial narrowing of gender disparity—from 0.718 to 0.612. This occurs, however, only because the overall percentage of women teaching law increased almost 50%. The percentage of women teaching Women and the Law remained basically unchanged over the time period (falling from 93.5% to 93% in 2002-2003). Thus, the progress shown under the relative measure is illusory. The course still remains almost totally sex segregated.

Despite its limitations, the relative measure does provide a different perspective on gender disparity that is most useful in examining changes over time. As a consequence, Table 5 displays the results using this method. Although the 50% definition of over or under representation used by Model seems very high, the table nevertheless uses it, with one modification as explained below. Courses in which females are over-represented by at least 50% are labeled “over” and courses in which males are over-represented by at least 50% are labeled “under”. In addition, it lowers the bar slightly by highlighting courses with an “over” or “under” label are those in which the variation is only 40% rather than 50%.

The results under the relative measure are generally consistent with the results under the absolute measure. The vast majority (17/22 or 77.3%) of the

courses that had a statistically significant change in the gender composition using an absolute measure had the same directional change (e.g. widening) under the relative measure. The gender gap in the remaining 22.7% of these courses increased under the absolute measure, but remained on par under the relative measure. I have defined “on par” to mean the change from 1990-1991 to 2002-2003, which was  $\leq 0.05$ . No course with a statistically significant change in gender composition showed a widening under one measure but a narrowing under the other.

Even when looking at all courses—including courses that experienced a non-statistically significant change over time—the two measures produced diametrically opposed results in only a small minority (11.4%). For example, in a course that had a male disparity in 1990-01, absolute disparity can increase and the relative disparity can narrow when the rate of women entering a particular course increases more than the rate of increase in the overall percentage of women law professors. For example, assume that in Year 1 the overall percentage of women professors is 20% but only 10% of professors teaching course X are women. The absolute disparity is 0.10 [0.20-0.10] and the relative disparity is  $10/20=50\%$ . Now assume that in Year 2 the overall percentage of women professors is 30% and 18% of professors teaching course X are women. Absolute disparity has increased to 0.12 [0.30-0.18] but relative disparity has decreased because the percentage of women in X, relative to the overall percent has now increased to 60% [ $18/30=60\%$ ]. In other words, the increased percentage of women in X was 80%, whereas the increase overall was only 50%. For example, absolute disparity in Juvenile Law increased from 0.209 to 0.217 from 1990-1991 to 2002-2003, but decreased in relative terms from 1.96 to 1.68 (31.8%).

Forty-nine percent of the cases produced the exact same result (e.g., both widened) under both measurements. Corporate Finance illustrates this situation. In 1990-1991, 10.6% of professors teaching Corporate Finance were women, whereas overall 21.7% of professors that year were women. The course thus had a male disparity, because an absolute gender distortion of  $-0.111$  is statistically significant. Measured in relative terms, the percentage of women in Corporate Finance, as a percentage of the overall percentage of women teaching, was 49% of the overall 21.7%. By 2002-2003, the gender distortion had increased to  $-0.191$ , resulting in the course remaining a male disparity course. Gender disparity also widened using the relative measure since the percentage gap also increased. The percentage of female professors in Corporate Finance (12.7%) had decreased to being only 40% of the overall 31.8%.

Thirty-nine percent of the seventy-nine courses experienced a change under the absolute method but remained “on par” with the relative measure. Thirty out of the thirty-one showed a widening absolutely, and remained on par relatively. For example, Contracts increased its absolute disparity from 0.039 to 0.057, yet the relative disparity remained stable at 0.82.

**TABLE 5**  
**Relative Disparity Between Women Teaching Each Course**  
**and Women Teaching Law Overall**

Course	1990 – 1991 21.7% Women			2002-2003 31.8% Women			Change Across Years
	Prop. Women	Index		Prop. Women	Index		
Accounting	0.09	0.44	Under	0.11	0.35	Under	Widened
Administrative Law	0.11	0.50	Under	0.18	0.57	<i>Under</i>	Narrowed
Admiralty	0.04	0.18	Under	0.06	0.19	Under	On Par
ADR	0.23	1.07		0.32	1.00		Narrowed
Agency and Partnership	0.12	0.56	<i>Under</i>	0.18	0.57	<i>Under</i>	On Par
Aging and the Law*	0.60	2.21	Over	0.47	1.47	Over	na
Agricultural Law*	0.19	0.89		0.27	0.86		na
Antitrust Law	0.08	0.36	Under	0.12	0.37	Under	On Par
Aviation and Space*	0.00	0.00	Under	0.10	0.31	Under	na
Business Planning	0.17	0.76		0.23	0.72		On Par
Civil Procedure	0.19	0.89		0.30	0.96		Narrowed
Civil Rights	0.29	1.34		0.36	1.13		Narrowed
Clinical Teaching	0.28	1.29		0.45	1.43	<i>Over</i>	Widened
Commercial Law	0.17	0.79		0.24	0.77		On Par
Commercial Paper	0.18	0.82		0.26	0.80		On Par
Community Property	0.32	1.49	<i>Over</i>	0.48	1.49	<i>Over</i>	On Par
Comparative Law	0.12	0.54	<i>Under</i>	0.18	0.56	<i>Under</i>	On Par
Computers and the Law	0.16	0.72		0.29	0.91		Narrowed
Consumer Law	0.16	0.71		0.19	0.58	<i>Under</i>	Widened
Conflict of Laws	0.12	0.57	<i>Under</i>	0.19	0.60	<i>Under</i>	On Par
Constitutional Law	0.15	0.69		0.20	0.61		Widened
Contracts	0.18	0.82		0.26	0.82		On Par
Corporate Finance	0.11	0.49	Under	0.13	0.40	Under	Widened
Corporations	0.16	0.74		0.23	0.73		On Par
Creditors' Debtors' Rights	0.14	0.65		0.19	0.59	<i>Under</i>	Widened
Criminal Justice	0.17	0.78		0.27	0.85		Narrowed
Criminal Procedure	0.16	0.72		0.24	0.76		On Par
Education Law	0.18	0.84		0.33	1.03		Narrowed
Employee Benefit Plans*	0.40	1.84	Over	0.43	1.35		na
Employment Discrimination	0.40	1.85	Over	0.46	1.44	<i>Over</i>	Narrowed
Entertainment Law*	0.28	1.28		0.19	0.60	Under	na
Environmental Law	0.13	0.61		0.21	0.67		Narrowed
Equity	0.13	0.60	<i>Under</i>	0.15	0.48	Under	Widened
Estate and Gift Taxation	0.22	1.01		0.25	0.79		Widened
Estate Planning	0.17	0.78		0.24	0.74		On Par



Estates & Trusts	0.27	1.27		0.39	1.23		On Par
Evidence	0.14	0.67		0.22	0.69		On Par
Family Law	0.41	1.89	Over	0.59	1.85	Over	On Par
Federal Courts	0.16	0.73		0.24	0.77		On Par
Financial Institutions	0.19	0.86		0.27	0.86		On Par
Government Contracts*	0.03	0.16	Under	0.07	0.23	Under	na
Health Care Law	0.37	1.72	Over	0.39	1.22		Narrowed
Immigration Law	0.23	1.05		0.44	1.37		Widened
Insurance	0.10	0.47	Under	0.13	0.41	Under	Widened
Intellectual Property	0.18	0.84		0.25	0.79		On Par
International Law	0.10	0.46	Under	0.23	0.74		Narrowed
International Organizations	0.08	0.38	Under	0.18	0.56	<i>Under</i>	Narrowed
International Transactions	0.11	0.52	<i>Under</i>	0.18	0.57	<i>Under</i>	On Par
Introduction to Law	0.14	0.65		0.23	0.72		Narrowed
Judicial Administration*	0.08	0.37	Under	0.27	0.85		na
Jurisprudence	0.10	0.48	Under	0.23	0.71		Narrowed
Juvenile Law	0.43	1.96	Over	0.54	1.68	Over	Narrowed
Labor Law	0.21	0.95		0.27	0.84		Widened
Land Use Planning	0.17	0.77		0.23	0.73		On Par
Law and Economics	0.06	0.29	Under	0.08	0.26	Under	On Par
Law and Medicine	0.27	1.24		0.40	1.26		On Par
Law and Psychiatry	0.17	0.79		0.18	0.58	<i>Under</i>	Widened
Law and Science	0.06	0.28	Under	0.21	0.66		Narrowed
Law and Social Science	0.15	0.68		0.25	0.78		Narrowed
Law Office Management	0.14	0.65		0.22	0.68		On Par
Legal History	0.12	0.54	<i>Under</i>	0.16	0.51	<i>Under</i>	On Par
Legal Method	0.22	1.00		0.35	1.10		Widened
Legal Profession	0.17	0.78		0.30	0.95		Narrowed
Legal Research and Writing	0.37	1.71	Over	0.54	1.68	Over	On Par
Legislation	0.15	0.67		0.26	0.83		Narrowed
Local Government	0.14	0.65		0.21	0.67		On Par
Mass Communications Law	0.11	0.50	Under	0.18	0.56	<i>Under</i>	Narrowed
Military Law*	0.03	0.14	Under	0.15	0.46	Under	na
Native American Law	0.16	0.72		0.30	0.96		Narrowed
Natural Resources	0.13	0.58	<i>Under</i>	0.22	0.68		Narrowed
Oil and Gas	0.12	0.55	<i>Under</i>	0.13	0.41	Under	Widened
Poverty Law	0.22	0.99		0.51	1.62	Over	Widened
Products Liability	0.18	0.84		0.21	0.65		Widened
Property	0.23	1.08		0.32	1.01		Narrowed
Real Estate Transactions	0.16	0.72		0.23	0.71		On Par
Regulated Industries	0.11	0.51	<i>Under</i>	0.13	0.40	Under	Widened
Remedies	0.19	0.89		0.28	0.89		On Par
Securities Regulation	0.15	0.71		0.27	0.86		Narrowed
Social Legislation	0.26	1.22		0.42	1.33		Widened

Sports Law	0.04	0.16	<i>Under</i>	0.14	0.45	<i>Under</i>	Narrowed
Taxation, Federal	0.17	0.78		0.22	0.70		Widened
Taxation, State and Local	0.15	0.70		0.25	0.80		Narrowed
Torts	0.19	0.86		0.28	0.86		On Par
Trade Regulation	0.05	0.21	<i>Under</i>	0.14	0.45	<i>Under</i>	Narrowed
Trial and Appellate Advocacy	0.23	1.04		0.32	1.01		On Par
Water Rights	0.10	0.45	<i>Under</i>	0.18	0.55	<i>Under</i>	Narrowed
Women and the Law	0.94	4.31	Over	0.93	2.93	Over	Narrowed
Workers' Compensation*	0.14	0.62		0.20	0.63		na

## Key:

On Par

Narrowed or Widened

Under

Over

*Italics* indicates on the border

\* indicates sample size is too small

Change  $\leq 0.05$ Change  $> 0.05$ Representation  $\leq 0.50$ Representation  $\geq 1.5$ Representation over  $\geq 1.4$  or under  $\leq 0.6$