

BEYOND GUINIER: A CRITIQUE OF LEGAL PEDAGOGY

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In November, 1994, Lani Guinier and several of her colleagues from the University of Pennsylvania (Penn) stormed the law school world with an article revealing statistical data that suggested that women do not perform as well as men in law school.¹ The study found that while women and men enter Penn Law School with equal credentials, women lose ground during law school.² To some, the study confirmed the obvious, to others, the conclusions were dismissable as ungeneralizable, and to still others, the report posed an unexpected threat to the foundations and traditions of the long-established law school classroom. In her article, Guinier criticizes law school pedagogy as hierarchical and hostile to women and urges law schools to take action to improve conditions.³ Guinier employed a host of methodologies to examine the situation, including a surveying process that used qualitative and quantitative approaches to assess women's performance in law school.⁴ The results of her study showed that men are three times more likely than women to be in the top 10 percent of their law school class in their first year, and twice as likely to be in the top 10 percent in their second and third years.⁵ Guinier and her colleagues examine law school from many angles, stating that major changes must be implemented to reform a system in which "white men rise to the top, but women scatter downward."⁶ Since incoming first year law classes have leveled off at a one-to-one male/female ratio, Guinier argues that the curriculum must shift to accommodate these equal numbers.⁷ Law school is no longer a "gentleman's" club;⁸ thus Guinier argues that for women to be fully integrated and accepted, schools need to make broad-reaching changes.⁹

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1. Lani Guinier, Michelle Fine & Jane Balin, with Ann Bartow and Deborah Lee Stachel, *Becoming Gentlemen: Women's Experience at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994) [hereinafter Guinier].

2. *Id.* at 21-23.

3. *Id.* at 98-100.

4. *Id.* at 6-12.

5. *Id.* at 26.

6. *Id.* at 67.

7. *Id.* at 6.

8. *Id.* at 5.

9. *See id.* at 98-100 (describing suggested changes).

One of the strengths of Guinier's article is that she uses diverse methods to critique modern law school practices. *Becoming Gentlemen* focuses primarily on the critique, however, and stops short of suggesting what specific changes should be implemented. The article offers three general suggestions as to how law schools might address the problem of gender inequality in legal education. Guinier first suggests that the Penn Law School community question the traditional, Socratic-method classroom¹⁰ that is omni-present in first year life.¹¹ Second, she advocates investigating the use of non-adversarial methods of problem solving in the classroom, which may be more comfortable for students, and may require smaller class sizes for some courses.¹² Third, she proposes that the Law School study the actual ways that students learn most effectively, and suggests faculty/student and older/younger student mentoring programs as well as teaching sessions on coping with the rigors of legal academia.¹³

Guinier's article provides only a brief treatment of possible recommendations. This piece will consider Guinier's recommendations and add some additional suggestions. This article will also apply Guinier's results and recommendations to one particular law school, New York University School of Law (N.Y.U.).

In response to Guinier's study, students at N.Y.U. have organized several groups to look at pedagogical techniques in their law school, and to examine the way those methods might affect or alienate women. The umbrella organization is called Law Women, a student group to which all women at N.Y.U. automatically belong, that has no particular feminist agenda. In the fall of 1994, when the group realized that there were several feminist goals that many members wished to pursue, the group organized the 2X Task Force.¹⁴ One of the 2X Task Force's committees is wholly dedicated to the issue of law school pedagogy. This committee, called

10. The "Socratic" classroom refers to the traditional large classroom format used at law schools nationwide. It is called a Socratic classroom after the teaching style of Socrates, who generally engaged in discussions with individual pupils, and who answered pupils' questions by posing still more questions. In a true Socratic dialogue, the teacher conducts an open-ended discussion through which both the teacher and student are led to a greater understanding. Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 243 (1997). Scholars have noted that most law school classrooms probably do not engage in true Socratic dialogues. *Id.* Typically, in a Socratic law school classroom, a professor engages individual students in a discussion. The professor usually picks a student, seemingly at random, and asks him or her questions about the cases assigned for that class. The theory is that the students who have not been called on will attempt to answer the professor's questions in their heads along with the student who has been. For an extensive analysis and critique of the Socratic method, as applied to the law school classroom, see Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997).

11. Guinier, *supra* note 1, at 93-95.

12. *Id.* at 95-97.

13. *Id.* at 97-98.

14. The name 2X Task Force stems from the two female X chromosomes. I was one of the founding members of the 2X Task Force. My inspiration to write this note, and the

"Voices in the Classroom," has been examining N.Y.U.'s classrooms closely, through discussions with faculty members, surveys of the student body, panel discussions, and statistical studies,¹⁵ to determine whether, and to what extent, N.Y.U. has problems similar to the ones Guinier identified at Penn. Through these activities, and informal discussions with students, 2X has found at N.Y.U. much of the same gender-related discontent with the law school experience that Guinier found at Penn.¹⁶

This paper is a continuation of the Guinier study in the context of another, comparable law school. This article will not question Guinier's methods or results, rather it will analyze her ideas and add some data, in an attempt to elaborate on her proposals. I believe, as Guinier does, that the law school curriculum needs to be revamped, but not radically overthrown. This piece shares Guinier's conclusion, that much of traditional law school pedagogy discriminates against women in the classroom. It also shares her argument that law schools need to implement a diverse set of pedagogical techniques to accommodate the various perspectives of a diverse student body.¹⁷ My intention here is not to present statistics or generalized truth-claims about students' experiences. Rather, based in large part on my experience as a founding member of the 2X Task Force, interviews with a varied group of law school students and faculty, and the Guinier study, this piece explores some of the incremental changes that the Guinier study suggested, but did not examine. Proscriptively, this piece does not seek to eliminate entirely the law school classroom as we know it, it simply argues that law school administrations, faculty, and students should develop alternatives and variety.

In the first section, I introduce several theories of pedagogy and explain how law school classrooms, in many ways, work against several tenets of effective teaching. I discuss the idea of "contextual learning," especially

information about the Task Force's work, stems from my own experience with the group. My views do not necessarily represent those of the group as a whole.

15. The 2X Task Force organized a panel discussion which brought together law school faculty, education specialists, and a member of the Guinier team to discuss issues of gender and pedagogy. Other panels have been more focused. In March of 1997, the Task Force held a forum on the teaching of rape in criminal law classrooms. The panel was composed of criminal law professors, writers of criminal law textbooks, and a second-year student from N.Y.U. Law School who explained how she, as a rape survivor, experienced her first year criminal law class discussions of rape. Most recently, 2X has been involved in a quantitative study which examines graduating students' experiences in law school.

16. Indeed, so many female students and faculty found the Guinier study touched on experiences they had had, that immediately following the publication of Guinier's study, approximately 400 students and more than half of the female faculty at N.Y.U. Law School gathered to discuss the issue of gender and pedagogy.

17. This paper is inherently limited. While this paper seeks to be sensitive to a diversity of perspectives, it will undoubtedly fall short in many respects. The focus I have chosen for this paper is a feminist one—looking at how law school classrooms affect women. However, I do not purport to speak for all women; I do not believe that women can be generalized into one group at all times. For instance, women of ethnically or socio-economically diverse backgrounds may view these issues differently.

as it relates to professional education. I also introduce the concept of the "comfortable classroom" and explain ideas behind maintaining a good rapport with students while balancing control of the classroom. I then relate these concepts to ideas of managing the anxiety level among students. Finally, I discuss the theory of feminist pedagogy and argue that it can have a place in the law school classroom.

In Part II, I offer suggestions for revamping the traditional law school curriculum to make it more accessible to women through effective teaching methods. These suggestions are based on examples from the N.Y.U. classroom. I do not argue for an overthrow of the Socratic method. Rather, I claim that professors and administrators need to take active steps to make current methods more effective. I also recommend ways to restructure the traditional teaching style in order to make it less intimidating and create a less hierarchical classroom. I argue for reducing class size in at least one first year section. I advocate increasing the number of teaching assistants and calling for more professor/student interaction. I also encourage professors to use techniques to relieve anxiety and tension in the classroom. In addition to changes in established practices, I call for the implementation of new pedagogical strategies that law professors can adopt to introduce variety and stimulation in their classrooms. For example, I propose using narrative, brainstorming exercises, actual case files, role playing, midterms, and practice exams. Finally, I advocate that law schools continue to encourage student involvement in non-classroom work such as clinics, participation in journals, and extra-curricular activities.

I.

TRADITIONAL THEORIES OF PEDAGOGY AND THEIR ROLE IN THE LAW SCHOOL CLASSROOM

The law school classroom demands that professors perform a unique balancing act. They must prepare students for the confrontation and competition that characterizes legal practice, while sustaining an effective and interesting classroom environment. Unfortunately, many professors choose to tip the balance in favor of preparing students for the rigors of the outside world at the expense of maintaining an effective classroom atmosphere. As some scholars have noted, the Socratic method has "so dominated thinking about legal education that other teaching methods have been marginalized or precluded."¹⁸

A. *The "Contextual" Approach*

Law schools must, to some extent, make students ready for their work after graduation, where often the fastest thinker will succeed and the slower, more contemplative mind may fail. William James, in his writings

18. Davis & Steinglass, *supra* note 10, at 250.

on teaching, stated that “the teacher’s prime concern should be to ingrain into the pupil that assortment of habits that shall be most useful to him throughout life.”¹⁹ In professional school, it is important to teach students the ways of the outside world, rather than fill them with theoretical knowledge that is divorced from the practical aspects of the profession. It would be the irresponsible teacher who paid no attention to the context of her teaching. Chris Kyriacou, an education specialist, states that the two initial tasks of the teacher are to think of the context of the teaching and to think of the outcome of the teaching.²⁰ A lawyer needs to learn to speak in public, to articulate and enunciate her words loudly and clearly, and to defend positions she might not choose herself. Traditional law school teaching techniques are, to an extent, useful for developing some of these skills. These teaching techniques, however, conflict with the fundamentals that Myron H. Dembo, an educational expert, believes are necessary to create a successful classroom, such as maintaining a comfortable environment, respecting students’ ideas, and working to minimize anxiety levels.²¹ A professor must maintain an effective classroom environment in order to ensure that students retain the material, instead of focusing on their anxiety.²² Teaching within the supposed “real-legal-world” contextual framework is not only contrary to effective teaching techniques, but according to Guinier’s study, it may have serious adverse consequences, particularly for women.²³

B. The “Comfortable” Classroom

Traditional law school pedagogy relies primarily on the use of the Socratic method.²⁴ At N.Y.U., like other law schools, the Socratic method is the primary pedagogical technique used in the 100-person first year classroom, despite the fact that educational theorists have criticized it as counter to many important strategies of effective teaching.²⁵ Since the Socratic method is premised on challenging students no matter what they say, thereby demonstrating the limits of students’ understanding, some students find the process, which occurs in a public setting, to be humiliating.²⁶ The anxiety felt by some students is exacerbated by the normal method of law

19. WILLIAM JAMES, TALKS TO TEACHERS ON PSYCHOLOGY: AND TO STUDENTS ON SOME OF LIFE’S IDEALS 58 (1958).

20. CHRIS KYRIACOU, EFFECTIVE TEACHING IN SCHOOLS 101 (1986).

21. MYRON H. DEMBO, APPLYING EDUCATIONAL PSYCHOLOGY 169-170, 184-85 (1994) (asserting that praising students’ good work is also essential).

22. *Id.* at 185.

23. Guinier, *supra* note 1, at 98.

24. *See supra* note 10 (describing Socratic method).

25. *See, e.g.*, Dewitz, *supra* note 10, at 243-45 (noting limits of questioning as a way of building students’ understanding); Davis & Steinglass, *supra* note 10, at 270-75 (discussing problems with questions, social context, lack of participant control and activity learning process, and coverage of Socratic method).

26. Dewitz, *supra* note 10; Davis & Steinglass, *supra* note 10.

school evaluation—the end-of-the-semester exam. The “one-shot” exam system causes many law students to seek assessment from other sources, thereby putting a primacy on performance in the classroom.²⁷ One of the first principles new teachers learn is that students flourish in environments in which they are comfortable.²⁸ When students are uncomfortable, their ability to absorb information drops significantly.²⁹ Moreover, when the Socratic method is the only teaching style used in classrooms, women react against its tendencies toward antagonism and argumentativeness.³⁰

1. *Good Rapport While Maintaining Order.*

To achieve a successful learning environment, teachers must create a good rapport with students while maintaining strict control of the class.³¹ The professor needs to exert a certain level of control without destroying the classroom community. Maintaining too much control over students' speech “not only fails to foster students' language skills effectively, but also tends to undermine their self-esteem as learners,” causing less-confident students to drop out of participation in discussion or volunteer exercises.³² For example, when a professor leads a student through a hypothetical, structuring and controlling the student's response, the student can follow along and answer discrete questions, but does not necessarily understand the process as a whole.³³ The dialogue which was seemingly designed to produce an active learner reinforces the student's “subordinated and passive” position relative to the professor.³⁴ The professor walks the student through the hypothetical or case, ultimately stating the solution, but the student lacks an understanding of the process as a whole and is most likely unaware of why the teacher has done what he or she has done.³⁵

Several N.Y.U. law students, especially women, have stated that professors maintain too much control over the classroom and fail to shape a sense of rapport.³⁶ One female law student complained that “[professors] are like dictators” and “are completely inaccessible when they are standing at the front of the room.”³⁷ This student found that she responded most

27. Davis & Steinglass, *supra* note 10, at 272.

28. DEMBO, *supra* note 21, at 185.

29. *Id.*

30. Guinier, *supra* note 1, at 3, 45-47.

31. See JOSEPH M. NOTTERMAN & HENRY N. DREWRY, *PSYCHOLOGY AND EDUCATION: PARALLEL AND INTERACTIVE APPROACHES* 189 (1993) (stating that teachers must acquire strong “management skills”).

32. KYRIACOU, *supra* note 20, at 144.

33. Davis & Steinglass, *supra* note 10, at 258.

34. *Id.*

35. *Id.*

36. Interview with B.M., second-year student at N.Y.U. School of Law, in New York, N.Y. (Oct., 1995); Interview with K.S., second-year student at N.Y.U. School of Law, in New York, N.Y. (Nov. 1995); Interview with M.N., second-year student at N.Y.U. School of Law, in New York, N.Y. (Oct., 1995).

37. Interview with B.M., *supra* note 36.

favorably to professors who adhered to a more conversational and casual teaching style and less positively to those “who stood up there and yelled at you if you got the answer wrong and who felt there was only one right answer.”

2. *Creating a Community*

Students learn better when they have a sense of community within the classroom.³⁸ Notterman and Drewry state that a professor should “[s]elect teaching strategies and organize learning activities that foster a sense of the class as a small community of which each student is a comfortable part.”³⁹ Positive reinforcement enhances students’ drive to continue learning.⁴⁰ When a student feels that he or she is an individual participant contributing to a greater whole, a higher level of comfort is achieved and the student gains more self-esteem and confidence in the classroom.⁴¹ To create this community atmosphere, student and teacher “must recognize each other as individuals, hold each other in esteem, and treat each other in a manner consistent with such esteem.”⁴² Teachers should speak on the same level as their students when at all possible.

Several female students stated that they believe community is rarely achieved in law school classrooms. One woman commented that when she got called on by a professor she “tried to focus only on the professor, kind of like tunnel-vision, to pretend I was just having a conversation with the professor.”⁴³ This woman did not see herself as contributing to a community of learning; she felt that she performed best by ignoring her peers and focusing only on interacting with the professor. Another woman stated that she contributed in class “only so the professor knows who I am because I might need something from that professor later.”⁴⁴ So too, a professor commented that “[s]tudents gave their presentations to me, instead of to their peers. They looked at me as they made their comments, hoping what they were saying was in line with my thinking.”⁴⁵

38. DEMBO, *supra* note 21, at 170-80; NOTTERMAN & DREWRY, *supra* note 31, at 190.

39. NOTTERMAN & DREWRY, *supra* note 31, at 190

40. See H.S.N. MCFARLAND, *PSYCHOLOGICAL THEORY AND EDUCATIONAL PRACTICE: HUMAN DEVELOPMENT LEARNING & ASSESSMENT* 54 (1971) (arguing that professors must be sensitive to students’ self-esteem).

41. DEMBO, *supra* note 21, at 170-71.

42. KYRIACOU, *supra* note 20, at 130.

43. Interview with M.N., *supra* note 36.

44. Interview with B.T., second-year student at N.Y.U. School of Law, in New York, N.Y. (Nov., 1995).

45. Linda Morton, *Creating A Classroom Component for Field Placement Programs: Enhancing Clinical Goals With Feminist Pedagogy*. 45 ME. L. REV. 19, 37 (1993).

3. *Minimizing Anxiety Level*

Students also learn more quickly and more effectively when classroom stress levels are low.⁴⁶ Dembo asserts the importance of a low-anxiety atmosphere, stating that teachers ought to work to reduce tension levels as much as possible.⁴⁷ Teaching treatises also agree that a teacher should never humiliate students because it inhibits students' ability to learn.⁴⁸ Students' perceptions of themselves before their instructors and their peers is essential for self-confidence, effective participation, and classroom contribution.⁴⁹

Students at N.Y.U. have recounted several experiences in which professors' use of the Socratic method humiliated them.⁵⁰ For example, one woman stated that a professor called on her Socratic-style when she was not prepared for class because she had been ill the preceding week.⁵¹ When she responded that she wished to pass, the professor prohibited her from passing and forced her to try to answer a question anyway. She recalled a strong feeling of humiliation. "It was totally degrading. I just felt so stupid. It was unfair of him to do that to me, because it's not like I [was] usually unprepared for class." Another student stated that she felt "alienated and embarrassed" when the professor "just wouldn't let up."⁵² She recounted times in her first year section when she clearly did not know the answer and the professor "badgered" her until she formulated a ridiculous response. This woman also reported a profound sense of anxiety before this class.⁵³ Scholars, too, have noted that the Socratic method may impact some students adversely: "While some students might respond to this experience determined to return to fight another day, others will be equally determined to avoid a repetition by avoiding class participation. All of this may make it very difficult for students to focus on learning rather than performing."⁵⁴

46. See, e.g., Dembo, *supra* note 21, at 162-63 (noting high levels of anxiety can be detrimental in achievement settings, leading to lower grades, motivational problems, and humiliation, but when students experience learning in nonstressful situations, highly anxious students perform as well as or better than students with low anxiety).

47. DEMBO, *supra* note 21, at 185.

48. See NOTTERMAN & DREWRY, *supra* note 31, at 191 (stating that humiliation tactics are never effective for teaching or discipline).

49. *Id.*

50. Interview with B.M., *supra* note 36; Interview with K.S., *supra* note 36.

51. Interview with K.S., *supra* note 36.

52. Interview with B.M., *supra* note 36.

53. It is useful to compare this statement to the remarks of a male second-year Boston University law student, E.G.: "No, I don't feel humiliated. Socratic Method is great because it keeps you on your toes. Plus, I'm great at it."

54. Davis & Steinglass, *supra* note 10, at 272.

C. Feminist Pedagogy

Several theorists have suggested introducing aspects of feminist pedagogy into the legal classroom in order to develop different ways of thinking and to add a more diverse perspective.⁵⁵ The less-confrontational, more-inclusive style of feminist pedagogy could potentially serve as a basis for reforming legal education.

Feminist pedagogy is based upon five elements: 1) a collaboration of teaching and learning to narrow the gap between professors and students, 2) a cooperative communication style to decrease adversariness, 3) a holistic approach to learning which incorporates many styles and disciplines, 4) strategies for theory building that encourage students to introduce theories in opposition to, or in support of, existing ones, and 5) action projects to incorporate clinics or projects with classroom learning.⁵⁶

Feminist pedagogy also adheres to the idea that learning happens by listening to, and talking with, other students.⁵⁷ "Traditional styles of teaching tend to foster classroom interactions that reflect competitive rather than cooperative patterns" and individual efforts are valued more highly than contributions to the group discussion.⁵⁸ Feminist teaching methodology, on the other hand, "creates a student-facilitated, non-hierarchical atmosphere in which students learn about the practice of law by sharing their own experiences in the field and listening to those of others."⁵⁹ It also incorporates the idea that a classroom should revolve around collective goals rather than individual goals and that this set of collective goals should lead to individual development.⁶⁰ While the approach espoused by feminist pedagogy would likely have positive implications for many male law students, it has even greater potential benefits for female law students, who generally tend to be less comfortable with traditional law school teaching than their male counterparts.⁶¹

The foundations of feminist pedagogy are in direct conflict with many aspects of traditional law school education. However, law school teaching can be modified in accordance with feminist and other alternative ideas of effective education.

55. See generally Elisabeth Hayes, *Insights from Women's Experiences for Teaching and Learning*, in *EFFECTIVE TEACHING STYLES* 56-65 (Elisabeth Hayes ed., 1989); Morton, *supra* note 45, at 97-99.

56. Hayes, *supra* note 55, at 59-64;

57. *Id.* at 64-65.

58. Hayes, *supra* note 55, at 57.

59. Morton, *supra* note 45, at 98.

60. *Id.* at 56.

61. Guinier, *supra* note 1, at 3.

II. SUGGESTIONS

Expanding on Guinier's work, I suggest revising the Socratic method, reducing class size, and developing alternative teaching methods, in order to make the law school experience more accommodating of diverse learning styles and less detrimental to women.

A. *Suggestion #1—Revise the Socratic Method*

Aggravated by the hostility they felt in the N.Y.U. classroom, students in the 2X Task Force formed the Voices in the Classroom Group to assess students' opinions about the Socratic method used so often at N.Y.U. They talked informally with many students at N.Y.U., who appeared to be discontent with current classroom styles. Group members also talked with several professors, some of whom agreed to test out other styles of teaching. Furthermore, the group sponsored a panel discussion in the Spring of 1996 called "A Public Discussion of Voices in the Classroom." At this panel discussion, law professors and education specialists agreed that the Socratic Method does not foster students' learning effectively.⁶² Students also suggested that the Socratic classroom needed to be reformed and revamped.

1. *Critique of the "Contextual" Argument*

Since law schools have a duty to prepare their students to be lawyers, they should continue to use the Socratic Method in some form and in some classes. It prepares future lawyers for speaking spontaneously, loudly, and in the context of intense questioning. These skills are vital, especially for future litigators. Furthermore, when used effectively, the Socratic Method gives students a way to evaluate their own progress and understanding against that of their classmates. The Socratic style also offers a welcome variation from a straight lecture format which often results in a loss of attention.⁶³ In addition, it may ensure that students do the assigned reading.

Nonetheless, Peter Dewitz, an educational scholar, argues that "the Socratic method is essentially dead," and that teaching should be in the form of conversation instead of inquisition.⁶⁴ Students interviewed agree

62. Prof. Peter Dewitz, an education specialist at the University of Virginia, stated that law students learn better by being encouraged to read, learn, and ask their own questions, rather than by simply being questioned. In addition, Mara Krechevsky, asserted that Socratic teaching only develops one kind of intelligence in law students.

63. Prof. Peggy Cooper Davis notes that there are many other ways to maintain student attention besides the Socratic Method, such as the use of on-line computer discussions. Interview with Peggy Cooper Davis, Professor of Evidence & Lawyering, N.Y.U. School of Law, in New York, N.Y. (Nov., 1995).

64. Interview with Peter Dewitz, Professor of Curriculum and Instruction, University of Virginia Curry School of Education (Oct., 1995).

that the Socratic Method builds public speaking skills and, to a certain extent, simulates a judge's questioning. But they also agree that the typical "cold calling"⁶⁵ style is purely artificial and lacks substantive benefits.⁶⁶ Some scholars have called the Socratic method a "mixed bag," noting that it makes some students more prepared and alert in class, while others find the "constant fear of humiliation" keeps them from concentrating.⁶⁷ Additionally, Socratic pedagogy can often be "hierarchical and authoritarian, emphasizing students' inadequacies and encouraging counterproductive competitiveness."⁶⁸ One N.Y.U. woman rebutted the notion that the Socratic Method paralleled appearing before a judge because an appearance in court happens at a designated time and allows for preparation.⁶⁹ Another woman argued that if, in the American legal system, a judge "popped into your office and just started questioning you," the cold calling method might have some merit.⁷⁰ Many students stated that this practice should be eliminated altogether as it is implemented arbitrarily (some students are called on several times a semester while others are never called), creates anxiety, intimidates students, and often pits students against one another when they might not actually be interested in defending either side.⁷¹ Another N.Y.U. student said the Socratic Method encouraged her to skip class when she was unprepared. She said, "I'd rather miss class than get called on and have no idea what to say."⁷²

2. *Suggestions for Improvement*

N.Y.U. students have offered a variety of suggestions for improving the Socratic Method. One student suggested giving students notice of when they would be "on call," so they could be prepared.⁷³ She also recommended that a professor resist "driving students into the ground" with questions they cannot answer just to humiliate them before their peers. Moreover, she advocated a liberal "pass" policy that would let students pass if they were not prepared or had nothing new to contribute. In the

65. Interview with L.H., second-year student at N.Y.U. School of Law, in New York, N.Y. (Nov., 1995); Interview with E.U., second year student at N.Y.U. School of Law, in New York, N.Y. (Nov., 1995); Interview with B.M., *supra* note 36. "Cold calling" refers to the practice of selecting students at random from the classroom seating chart. Through this method, students typically have no way of judging which day the professor will pick them, and often suffer anxiety as a result.

66. Interview with L.H., *supra* note 65; 65Interview with E.U., *supra* note 72; Interview with B.M., *supra* note 36.

67. Davis & Steinglass, *supra* note 10, at 278.

68. Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571, 1572 (1993).

69. Interview with L.H., *supra* note 65.

70. Interview with B.M., *supra* note 36.

71. *Id.*; Interview with E.U., *supra* note 72; Interview with L.H., *supra* note 69

72. Interview with E.U., second year student at N.Y.U. School of Law (Jan., 1997).

73. Interview with B.M. *supra*, note 36.

alternative, students could be entitled to pass in exchange for being called on the following class period.⁷⁴

Professor Deborah L. Rhode has suggested a “revival” of the Socratic Method which would move away from the “guess what I’m thinking approach,” in which every student response is “inevitably lacking.”⁷⁵ This approach would not demand from students “knowledge they do not themselves yet possess.”⁷⁶ Susan Williams posits a feminist approach which would produce questions that “seek to engage not only rational analysis, but also emotional responses,” like empathy and moral outrage “because knowledge creation occurs through all of these capacities.”⁷⁷ She explains that professors should not shun emotions in the classroom because “[emotions] can function as windows through which we can glimpse reality as seen from the perspective of a social position radically different from our own.”⁷⁸ This suggestion parallels one of the aims of feminist pedagogy because it introduces a more holistic teaching style by accepting a variety of strategies and types of responses.⁷⁹ It would not prevent the type of legal theorizing that exists in the traditional Socratic classroom, but would encourage and incorporate other more creative responses.

Kate Silbaugh, a professor at Boston University School of Law, believes that the Socratic method in its purest form conflicts with the feminist outlook that she brings to her classroom.⁸⁰ But as a Socratic-style professor, she argues that feminism and the traditional law school classroom can be reconciled.⁸¹ Silbaugh’s compromise has been to call on groups of students at once to represent the parties in a case. Three students, sitting near each other, are assigned to represent the plaintiff and three others represent the defendant. The students are encouraged to work together and to collaborate on their answers and representation. This technique “distributes anxiety” and eases pressure. While one student speaks, the others can flip through the textbook or their notes to add to the speaking student’s comment. Furthermore, it allows a natural division among those students who are more comfortable speaking and those who would rather locate relevant passages. Silbaugh adds that she accepts, at no penalty, notes from students stating that they are unprepared. Finally, she stresses that

74. *Id.*

75. Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 *STAN. L. REV.* 1547, 1555 (1993).

76. Williams, *supra* note 68, at 1575.

77. *Id.*

78. *Id.*; See also, MARTHA C. NUSSBAUM, *LOVE’S KNOWLEDGE: ESSAYS ON PHILOSOPHY AND LITERATURE* 40-42 (1990); Lynne Henderson, *Legality and Empathy*, 85 *MICH. L. REV.* 1574 (1987).

79. See Hayes, *supra* note 56, at 61 (stating that one aspect of feminist pedagogy is a holistic approach to learning, which would “support affective as well as cognitive learning, personal insight as well as skill acquisition and content knowledge”).

80. Telephone interview with Kate Silbaugh, Professor of Law, Boston University School of Law (Nov., 1995).

81. *Id.*

the collaborative Socratic style could only work in a setting that is already comfortable. She therefore works to make her classroom comfortable, respectful, fun and funny.⁸²

Although this piece calls for a reduction in the number of classes taught with the strictly Socratic approach, it also argues for a modification of the type of Socratic Method that classrooms use. Perhaps the best way to view this new Socratic Method is as a revival of Socrates' own method. A review of Socratic dialogue shows that Socrates sought a greater knowledge through his questioning. That greater knowledge was pursued both by the teacher and the student. Socrates, did not (as in the law classroom) possess the answers ahead of time and attempt to squeeze them out of his pupils. Through a gentle form of dialogue, Socrates and his partner in conversation collaborated to reach a greater understanding. Socrates' discussions did not humiliate or reprimand, and occurred in the spirit of collaboration for a higher goal.

Currently in the law school classroom, "[i]magination and creativity, supreme achievements by most educational standards, seem to have been demoted in favor of attaining legal tools."⁸³ A new pedagogy must not teach students "to ignore and obscure the feeling side of life, to divorce emotion from logic, as if they were incapable of peaceful coexistence."⁸⁴ The Socratic Method should place a larger emphasis upon emotional responses, personal narratives, and collaboration. This renewed approach will encourage differing responses that will in turn encourage new thinking styles and understandings of various viewpoints.

B. Suggestion #2 – Make Classes Smaller

In the last few years, several law schools have implemented policies of smaller class sizes in the first year. N.Y.U. should create smaller classes as well. According to the head of the Women's Law Center at Yale University Law School, Yale administrators decided that one first year class should be smaller in size because it was imperative that students be able to learn law from a more intimate perspective, as well as from the larger, Socratic-style class.⁸⁵ At Columbia University Law School students take either a small Torts or Contracts class, which has a maximum of 30 students, allowing students to interact personally with the professor and ask questions they might otherwise be too intimidated to voice in the larger

82. *Id.*

83. Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 561, 610-11 (1973).

84. David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 CAMPBELL L. REV. 61, 79 (1994).

85. Telephone Interview with Allison Conn, head of the Women's Law Center at Yale University Law School (Nov., 1995).

sections.⁸⁶ Stanford University Law School has implemented a small Criminal Law class, and, in 1996, began experimenting by making both Torts and Criminal Law one-quarter the size of the average eighty-person sections.⁸⁷ Stanford also does not use a strictly-Socratic style in any of its first year classes.⁸⁸

These law schools have made the switch to smaller classes mainly because they recognize that certain students thrive in the large classroom while others retreat. A greater balance is achieved by providing smaller settings as well. The intimacy of the smaller class allows students to gain comfort and forge relationships with both their peers and professors. Once this intimacy is achieved, students will be more willing to take risks in presenting and defending their ideas, voicing less popular views, and opposing majoritarian views than they might otherwise.⁸⁹ Educational Theorist Peter Dewitz supports these arguments, stating that discussion groups are an essential part of the learning process.⁹⁰ He further notes that studies have shown that discussion groups are particularly important to women's learning experiences.⁹¹

The smaller classroom can also be a place for confidence building. One student states, "What's funny is that I never once raised my hand in [the large setting], but in [the smaller section] I was the most talkative of everybody. That says something about my level of comfort."⁹² Some women also remark that they notice that their self-confidence rises in smaller classes.⁹³ Furthermore, one woman commented that after being intimidated or humiliated in the law classroom, she "shut off [her] mind" from generating responses to students' or professors' comments, opting to accept them passively and without intellectual reaction.⁹⁴ She also described a common phenomenon among women in the first semester of law school, wherein women's confidence levels slide dramatically. She said she had come into law school a curious and self-confident student who was willing to participate in class discussion. Once in law school, however, she noted a

86. Telephone Interview Interview with Zeita-Marion Lobley, Assistant Dean of Academic Services at Columbia University Law School (Mar. 16, 1998).

87. Interview with T.N., second year student at Stanford University Law School (Nov., 1995).

88. *Id.*

89. It is also true, however, that in a smaller class people who are uncomfortable talking and afraid that people will judge them based on a poor performance in class may be less likely to talk because they will be less able to hide in a group of 30 than in a group of 110.

90. Interview with Peter Dewitz, *supra* note 64.

91. *Id.*

92. Interview with T.P., second-year student at N.Y.U. School of Law, in New York, N.Y. (Oct., 1995)(regarding her "Lawyering" class, N.Y.U.'s ungraded legal research and writing seminar).

93. *Id.*; Interview with N.L., second year student at New York University School of Law (Apr., 1996).

94. *Id.*

marked drop-off in the frequency of her comments, until she stopped speaking up altogether, too anxious to voice her views.⁹⁵

Finally, the small classroom allows students to build relationships with professors. Students repeatedly comment in law school that they do not attend office hours because they are intimidated by their professors.⁹⁶ If students could express their views and opinions in a more congenial setting, they might lose the sense that a professor is bearing down on the class from the podium at the front of the room. Additionally, professors would have more of a sense of the types of issues that trouble students, the ways individual students create arguments, and specific problems students face. In turn, professors would be able to respond to students' needs more effectively and accurately.

Guinier mentions in her article that it is crucial that women law students develop mentor relationships with female professors.⁹⁷ A professor's mentoring role is important when students need recommendations for jobs or clerkships. A professor in the large classroom is in a better position to write a strong recommendation for someone who is able to articulate her views before a large group and is able to relate to the professor through the distance and adversariness of the classroom. However, that professor would know less about a more contemplative student who might write as strong an exam as her more assertive counterpart, but does not choose to speak out in class. In this way, the traditional system perpetuates the success of those who tend to feel more at ease in the Socratic classroom. Since, as the Guinier study points out,⁹⁸ those who feel more comfortable are overwhelmingly male, the success-cycle perpetuated is a male one. A professor in the smaller setting, however, would have a greater sense of each student individually and would be able to give advice or write recommendations based on that more personal knowledge.

This problem is especially prevalent at N.Y.U., where many students seek judicial clerkships which require extensive faculty recommendations. With the exception of the judicial term for 1997-98, men have consistently received more clerkships than women.⁹⁹ Men's dominance is evident not only in considering the total number of clerkships, but also those which are traditionally the most competitive: those on the federal district, circuit, or supreme courts. Indeed, men received almost precisely the same percentage of the total number of clerkships as they did of the federal ones, and so

95. *Id.*

96. Interview with N.E., L.H., and B.M., second year students at N.Y.U. School of Law, in New York, N.Y. (Nov., 1995).

97. Guinier, *supra* note 1, at 92-98.

98. *Id.* at 98.

99. These statistics are based on data contained in four documents produced by the N.Y.U. School of Law Placement Office. The documents are titled *New York University School of Law Graduates who have a Judicial Clerkship*. There is one document for each of the following terms: 1994-95, 1995-96, 1996-97, 1997-98.

I denote men's percentage of the federal clerkships in parentheses. In the judicial term of 1994-95, men received 69 percent (69 percent) of all clerkships awarded to N.Y.U. J.D. students.¹⁰⁰ In the judicial term of 1995-96, men received 60 percent (61 percent) of the total clerkships. In the 1996-97 term, men received 56 percent (57 percent) of the total. In 1997-98, women surpassed men for the first time, as men received only 38 percent (38 percent) of the total. It is not clear whether this final year is merely a blip on the screen with respect to every year before it, or whether it marks the beginning of a new trend.¹⁰¹

To confront the problem of large and intimidating first year sections, the N.Y.U. 2X Task Force, Voices in the Classroom Committee is preparing a proposal to have one first year section smaller than the usual 100 students.¹⁰² Currently, N.Y.U. has one small class in the first year, Lawyering. This innovative class teaches students both legal writing and oral advocacy skills, through papers and simulations. However, the benefits of having Lawyering as the only small class are severely limited because the class is neither graded, nor usually taught by full-time faculty. The 2X Task Force recognizes that there are financial constraints involved with minimizing class size. Therefore, it suggests creating a more intimate setting by holding weekly meetings with teaching assistants in small groups. At N.Y.U., teaching assistants are compensated with class credits instead of money, so this method would essentially be free. The proposal recommends that the class with the weekly small group meeting have ten teaching assistants instead of the usual two. Each teaching assistant would work with a group of ten students, allowing them to develop close relationships with one another, solicit advice, and voice concerns on confusing points in the class.

The 2X Task Force believes this proposal would be an intermediate step between the impersonal large classroom and expending the resources to provide one small class in the first year.¹⁰³ By collecting feedback at the end of the semester, the 2X Task Force hopes to be able to demonstrate that a small class benefits, and is popular with students. The next step would be the transition to a program like Stanford's or Columbia's.

100. I have excluded clerkships on the U.S. Tax Court since these are awarded to L.L.M. students.

101. More revealing statistics would be those demonstrating the percentages of women who apply successfully as compared to the number of men. However, while information regarding who obtains clerkships is public, names of those who apply, but do not receive a clerkship, is kept confidential.

102. Interview with Rupa Gupta, co-chairperson of the 2X Task Force, in New York, N.Y. (Mar. 13, 1998).

103. *Id.*

C. Suggestion #3—Develop Alternative Styles of Teaching

Guinier's piece demands that law schools examine the ways that students learn, and develop new strategies of teaching that account for different learning styles.¹⁰⁴ Educational pedagogy has begun to explore the use of creative methods in the classroom, but legal education has shied away from experimentation and creativity, opting to continue along more traditional lines. There are however, a number of ways that legal curriculum could incorporate and sustain new, more interesting teaching styles. There are, of course, risks that accompany experimentation with pedagogy, but pedagogy develops only if some ground breakers are willing to take on those risks.

1. Internet Discussion Groups

Professor Peggy Davis at N.Y.U. uses an on-line classroom in her Evidence class. Students subscribe to a computer account and participate in a conversation group with Professor Davis and the other students in the class. Students may submit questions to other students or to the professor and can comment on other submissions as well. This strategy encourages students who might not participate in the classroom of upwards of 100 students to participate in conversations about evidentiary issues.

2. Brainstorming

Brainstorming is an effective method when a new concept is introduced into the classroom. David R. Culp suggests that law school is far too stifling to a student's creativity and that brainstorming sessions can be a way "of free association, of letting ideas 'come out on the table, in profusion, and then only later on, tossing away those ideas which are bad, or useless, and retaining the ones which are good.'"¹⁰⁵ Brainstorming sessions harness students' energy and creativity, and place no idea on a higher plane than another. Brainstorming also encourages nonconfrontational participation without the threat of argument or ridicule. Culp recognizes that "most law students develop a reluctance to place their ideas before the class until they have very cautiously and carefully already considered as many counterarguments and possible qualifications as they can."¹⁰⁶ Students need to have the chance to take risks and go out on a limb. The limb may prove essential in gaining an understanding of the topic. Furthermore, taking risks develops confidence and enhances the chance that students will take risks later by volunteering other information.

In the process of brainstorming, some ideas and suggestions will be eliminated. However, this stage in the presentation of new material ought

104. Guinier, *supra* note 1, at 92-98.

105. Culp, *supra* note 84, at 65-66 (1994) (citing ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* 94 (1971)).

106. *Id.* at 67.

to happen after the initial session, once the professor has taught students the rudimentary aspects of the topic. At this point in the process, students will have some mechanism to judge which suggestions are the most useful. This second phase utilizes the reasoning skills that law students already possess. Students can choose to defend certain ideas or argue that one is more valid than another. The reasoning skills which were not a necessary component of the initial brainstorming session are fully-integrated in the second part.

Critics have praised the brainstorming method for its strengths as a nonconfrontational teaching method. Elementary school teachers often use this tactic to close the gap between more and less advanced students and to encourage more inhibited students to "partake in the fun."¹⁰⁷ Furthermore, it is essential that students have a period in which they can learn without being evaluated.¹⁰⁸ Culp states that "[e]xternal evaluation is always a threat and creates a need for defensiveness, and prevents some portion of the child's experiencing or sensing from achieving full awareness. What is lost is the openness that is so necessary to the production of new ideas."¹⁰⁹ To support this statement, Culp cites a study that placed Florida high school students into three testing groups: competitive, noncompetitive, and openly receptive.¹¹⁰ The openly receptive group registered the highest performance and the competitive group performed the worst.¹¹¹ The results of the study showed that flexibility and acceptance of nonconforming ideas achieves results in the classroom.¹¹²

3. Use of Actual Case Files

The use of actual case files in the classroom could make legal learning more realistic, concrete, and varied. It would be particularly effective in Civil Procedure or Evidence classrooms where the concepts are often made more understandable by example. A professor at the University of Maine Law School, Melvin Zarr, uses this technique. In his first year Civil Procedure class, he distributes an actual case file, complete with trial transcripts, court documents, and discovery documents not on file that counsel provided.¹¹³

107. Interview with Beth A. Thiemann, elementary school teacher at Buckingham, Browne & Nichols School, in Cambridge, Mass. (Oct. 1995).

108. Culp, *supra* note 84, at 69.

109. *Id.* (citing E. PAUL TORRENCE, *EDUCATION AND THE CREATIVE POTENTIAL* 57 (1963)).

110. *Id.* at 71 (citing John C. Adams, Jr., *The Relative Effects of Various Testing Atmospheres on Spontaneous Flexibility, a Factor of Divergent Thinking*, 2 J. CREATIVE BEHAV. 187, 188 (1968)).

111. *Id.*

112. *Id.*

113. Jeffrey W. Stempel, *All Stressed Up But Nowhere to Go: Pondering the Teaching of Adversarialism in Law School* 55 BROOKLYN L. REV. 165, 175, n. 38 (1989) (reviewing STEPHEN LANDSMAN, *READINGS ON ADVERSARIAL JUSTICE: THE AMERICAN APPROACH TO ADJUDICATION* (1988)).

One of the problems of traditional law school pedagogy is that so much of it is abstract and involves ideas that most students have never before experienced. Referring to a concrete object can demystify, and make more accessible, concepts that are otherwise hard to place. For instance, being able to view a summons, to read its actual language, and to imagine someone delivering it can make the process of learning in personam jurisdiction more concrete and understandable. Being able to refer to a case file repeatedly would also help students learn how the different facets of a case fit together: starting with establishing justiciability and jurisdiction, moving into motions, legal arguments, and venue, and ending with decisions and *res judicata* issues. First year students often toil over "how it all fits together,"¹¹⁴ and the ability to examine the progress of a case from start to finish could be enormously instructive.

Clinical education often uses case files to teach specific concepts. For example, the Civil Legal Services Clinic at N.Y.U. uses a case file method to teach motion practice.¹¹⁵ Students are able to view the file that a judge would have when making a decision on a motion. Thus, it is easier for students to understand how motion practice works by visualizing the process. When students have to draft their own motions, they have a good sense of just what a motion looks like, what it seeks to prove, and what the purposes of a motion are. This method could easily be adopted into the regular classroom as well.

4. Role Playing Technique

Several law school pedagogical theorists have posited that role playing can serve useful purposes in the classroom.¹¹⁶ It provides variety from normal classroom structure, encourages creative thinking, forces students to imagine the perspectives of parties to a case, and taps into different sorts of theoretical frameworks than the Socratic Method does.¹¹⁷ Barbara Bennett Woodhouse describes an interactive classroom that asks students to represent children in a simulated neglect and abuse case.¹¹⁸ Students role play the parts of attorneys, starting with the initial interview and moving

114. Interview with T.P., *supra* note 92. T.P. also remarked that she did not understand the interrelation of civil procedure rules until someone drew her a diagram of interconnected circles a week before her first semester exam.

115. Telephone Interview with Paula Galowitz, Director of Civil Legal Services Clinic, N.Y.U. School of Law (Mar. 23, 1998). Sample case files are on file with the Civil Legal Services Clinic.

116. See generally Barbara Bennett Woodhouse, *Mad Midwifery, Bringing Theory, Doctrine and Practice to Life*, 91 MICH. L. REV. 1977 (1993) (describing a mode or teaching that brings together theory, practice, and doctrine by bringing "practical" experiences into the classroom setting).

117. *Id.* at 1985-86 (discussing her own theory of role playing and listing other professors employing these methods).

118. *Id.* at 1982-85.

through the emergency detention hearing, the adjudicatory and depository stages, and finally to placement in adoptive homes.¹¹⁹ Case files, legal forms, and exhibits supplement the experience.¹²⁰ The process is videotaped for later discussion.¹²¹ Woodhouse explains that "each case unfolds in its own way, providing opportunities for insights as we review how a complex context influences students' perceptions and applications of the relevant statutes, doctrines, and policies."¹²²

This technique stands in stark contrast to the impersonality and anxiety inherent in the Socratic classroom and offers a creative, exciting atmosphere that may appeal to those less comfortable in the large classroom. Woodhouse stresses that the strict adherence to case law and statutes in the traditional classroom is maintained by her method.¹²³ The difference is that the legal rules are explored with an eye toward their role in advocacy as well as their policy implications.¹²⁴ She adds that "[t]heory is ever present," and she feels strongly that her class is no less academically rigorous than the traditional classroom.¹²⁵ The theoretical aspect of her class describes "the tools we use to integrate what we learn about law and lawyering into a normative framework of values."¹²⁶ Furthermore, Woodhouse claims that her pedagogical technique forces students, through immersion, to examine the cultural contexts out of which the clients' problems arise and to compare doctrinal norms across cultures.¹²⁷ She also believes that the practical element of learning is a necessity in a well-rounded legal educational experience.¹²⁸

Woodhouse's pedagogical technique is applied, however, in an upper-level class and seems a practical suggestion for a course limited in size to thirty people. Although it would probably be quite difficult to implement role playing as broadly as Woodhouse does, it could certainly be an integrated part of the first year curriculum. Even in a large class, students can be assigned roles as plaintiffs, defendants, and attorneys, and divided into small groups to enact the role plays prior to class. Alternatively, professors could divide the class into groups to prepare such role plays prior to class, and then call on one group to actually perform the role play in class for a ten minute mini-trial. The discussion that would usually accompany a case analysis would simply use the role play as the text.

119. *Id.*

120. *Id.* at 1982.

121. *Id.* at 1983.

122. *Id.* at 1982.

123. *Id.* at 1988-89.

124. *Id.* at 1984.

125. *Id.*

126. *Id.* at 1988.

127. *Id.* at 1984, 1988.

128. *Id.* at 1987.

Indeed, N.Y.U. Professor Derrick Bell has adopted some role-playing techniques in his Constitutional Law class, despite the class's large size.¹²⁹ He organizes his Constitutional Law class according to a docket for the U.S. Supreme Court. Each week the class addresses a different constitutional question. Students sign up to argue a specific issue before the Court. Each week, a different group of students argues its issue before the Court, which is composed of their peers. The Justices of the Court write opinions explaining why they decided the cases the way they did. Course requirements include writing response papers and class-written examinations.

Students who played roles would undoubtedly have much to offer from their particular viewpoints. Additionally, students have an equal opportunity for participation through the assigned day method. The strategy also minimizes anxiety, since students receive warning ahead of time that they are "on call" the next day. The curriculum would also meet Woodhouse's goals of integrating practice, theory, and discussion of cultural contexts.

5. *Use of Narrative and Storytelling*

Pedagogical theorists have suggested adding a narrative or storytelling element to the law school curriculum, both because it provides variety in form and because it can create a controlling set of characters and themes that can stay with the course throughout the semester. Furthermore, storytelling can add an often-lacking creative element to the classroom. Law students often complain of a notable and worrisome loss of creativity and imagination; narration in the classroom might help alleviate that sensation.¹³⁰ Plus, it provides context for the material.

Beryl Blaustone tells her class fictional short stories as a "review device for the basic rationales contained within the Federal Rules of Evidence."¹³¹ She claims that her storytelling is "based on an understanding of the human learning process and a desire that students understand the human dimension in the existence and perpetuation of law."¹³² She opposes the idea that learning happens through memorization or rote learning, and instead favors obtaining knowledge through a holistic, experiential process.¹³³ Blaustone emphasizes that the process of learning through storytelling should be a "pleasant and effortless" experience that should not be present necessarily in every class meeting, but should be a notable

129. DERRICK A. BELL, JR., *CONSTITUTIONAL CONFLICTS*, at xlviii-li (1997) (describing the course's structure).

130. Lawrence Silver, *Anxiety and the First Semester of Law School*, *Wis. L. REV.* 1201, 1218 (1968).

131. Beryl Blaustone, *Teaching Evidence: Storytelling in the Classroom*, 41 *AM. U. L. REV.* 453, 454 (1992).

132. *Id.* at 455.

133. *Id.* at 455-56.

and regular occurrence throughout the semester.¹³⁴ She also believes that the narrative method helps to relieve anxiety and restore joy in the classroom, which makes students more receptive to learning. In addition, she notes that a diverse classroom necessitates a diversity of teaching styles.¹³⁵

Blaustone's controlling narrative revolves around the life of John Henry Wigmore, commonly thought of as the greatest thinker on evidence doctrines and author of an important treatise on evidence law.¹³⁶ Her narrative reflects the story of Wigmore's life, molded somewhat to fit her needs of reviewing evidence doctrine.¹³⁷ Her tale starts out describing John Henry Wigmore as a small boy, and then continues through his childhood and adult life, summoning the Federal Rules of Evidence along the way.¹³⁸

Storytelling is also crucial because, to a certain extent, our legal system is based upon narration and retelling of facts. Whichever party casts the relevant facts in the best light can win the proceeding.¹³⁹ A party may also be victorious at trial if the retelling best adheres to the story the court has told in the past.¹⁴⁰ Thus, it is important for law students to learn storytelling techniques so that they can use them in their representation of clients.

6. *Take-homes, Midterms, Paper Options, and Practice Exams*

Law professors need to use alternative means of evaluation in addition to the current method, where one examination determines the entire grade. Many students find the testing procedure to be intimidating and not representative of their true abilities. Kate Silbaugh posited that women, in particular, have more trouble on law exams because they are more reluctant to make a choice hastily, and represent that side zealously, as a law exam forces students to do.¹⁴¹ Women, she said, are more contemplative with their choices and need more time to carefully make a decision. She added that once women and men have picked their positions, they can defend them equally well, but women lose out on exam-taking due to discomfort with making such hasty choices. As a result of this hypothesis, after noticing that men did slightly better in her first year torts class than women, Silbaugh gave her exam as an eight hour take-home instead of the three hour in-class. She found that the scores of women equaled or surpassed

134. *Id.* at 458.

135. *Id.*

136. *Id.* at 456-57. *See also*, Roscoe Pound, *John Henry Wigmore*, 56 HARV. L. REV. 988, 988-89 (1943) (extolling Wigmore's evidence treatise); W. ROALFE, JOHN HENRY WIGMORE: SCHOLAR AND REFORMER 32-75 (1977) (discussing Wigmore's casebooks).

137. Blaustone, *supra* note 131, at 457.

138. *Id.* at 460-61.

139. *See* Kim Lane Scheppele, *Legal Storytelling: Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2080 (1989) (describing the relevance of narrative to the resolution of disputes).

140. *Id.* at 2079.

141. Interview with Kate Silbaugh, *supra* note 80.

those of the men.¹⁴² Law professors should be encouraged to offer traditional style law exams removed from the “pressure cooker” atmosphere of time-limits.

Almost all first year classes at N.Y.U. give a single, in-class examination at the end of the semester. Several professors give a take-home examination, and at least one professor allows the take-home exam to be completed in a group setting. The vast majority of professors, however, adhere to the traditional examination format. Such a single-minded approach continually rewards those students with certain skills, and disfavors those who lack them, rather than providing a variety of measures to determine one’s law school performance. The fact that there is support for the gender bias of these exams makes the single exam approach that much more disturbing.¹⁴³

The 2X Task Force has also begun to put pressure on professors to create alternative ways of testing. One N.Y.U. property professor, Frank Upham, responded favorably to the proposal and agreed to add a midterm and a group project to the curriculum. Professor Upham also added several extra teaching assistants to his roster and encouraged frequent small-group sessions with these teaching assistants.

Providing a paper-writing option gives students a chance to show their abilities without the stress of the traditional law exam. Many students claim that their abilities to write in a relaxed environment are significantly better than when under pressure. A female second-year law student at N.Y.U. said “In an exam, I just try to write as many ideas as I can in the time we have. I don’t even think about my writing. I think I’m actually a really good writer when I am writing papers, but definitely not in exams.”¹⁴⁴ Papers tap into different, and perhaps more important, skills than do exams such as editing and revision. They also allow students a break from the process of “writ[ing] furiously, regurgitating all of the theories and maxims culled from the classroom.”¹⁴⁵ They allow students to bring in ideas they have developed over the semester rather than forcing them to simply replay material. Many N.Y.U. students claim that they receive noticeably better grades on take-home examinations and classes that offer a paper option.¹⁴⁶

Midterms and practice exams can be helpful in allowing students to gauge their progress before getting a final grade. Students complain that they have no mechanism by which to evaluate themselves prior to actually receiving their scores from first semester, which typically happens midway

142. *Id.*

143. See Guinier, *supra* note 1, at 21-27 (discussing gendered effects of law school exams).

144. Interview with B.M., *supra* note 36.

145. Culp, *supra* note 84, at 74.

146. Interview with B.M., N.D., and K.Y., third year students at N.Y.U. School of Law, in New York, N.Y. (Nov., 1996).

through the second semester of law school. For several years, Boston College School of Law has had a series of practice exams that first year students must take in December to have the experience of exam-taking and to evaluate their standing among their peers. Once students have completed this process, they have a month to continue studying over winter vacation and then take their actual first semester exams in January when they return. Students have found this process helps relieve some of the mystery and anxiety surrounding the first set of exams.¹⁴⁷ A midterm has the same effect, allowing students halfway through the semester to make sure that they are mastering the material and are on par with the rest of the class. Only one first year professor at N.Y.U. offers a midterm. No one offers a graded practice examination.

III. CONCLUSION

Lani Guinier's study brought to the attention of the legal community the wide-reaching discriminatory effects of the law school classroom. She demonstrated that women suffer from the use of the Socratic method and its incumbent humiliation as well as from the impersonality of law school, which allows men greater chances at success. While she suggested that vast changes were necessary, she left the specific recommendations open-ended. The possibilities are almost unlimited, yet there are several places to start: revamping the Socratic method, providing smaller classes, and introducing alternative teaching styles into the classroom such as brainstorming, role-playing, and narrative. These changes need to happen at N.Y.U. and other law schools. Groups like N.Y.U. Law Women and the 2X Task force should continue to push for reforms in legal education.

Traditional aspects of law school that are already nonconfrontational in nature need to be encouraged. Law schools should continue small-class lawyering and legal writing programs. Emphasis on clinical education should also stay strong, as clinics are generally smaller classes, with lots of individual attention. They provide students with hands-on learning experiences and enable them to interact with the community outside of law school.

Furthermore, students should keep working on journals and in extra-curricular activities, which allow a different type of involvement and encourage achievement in smaller settings. At N.Y.U., there are several students groups that train volunteers to appear in administrative courts on behalf of actual clients. The possibility for a first year law student to appear in court is a great learning opportunity. This type of extra-curricular activity can allow a student to learn through actual practice and in a student-only setting. Journals, too, enable students to work together and

¹⁴⁷ Interview with M.E., third-year student at Boston College Law School (July, 1995).

learn from one another about complicated aspects of the law. Further, journals teach students writing, editing, organizational, and managerial skills.

These modifications are just the beginning of the spectrum of changes that need to happen. The traditional methods that law schools use today do have merit; even the Socratic method teaches useful skills. These more traditional pedagogies do not need to be discarded, but they do need to be improved as well as supplemented by newer, more innovative techniques. The classroom needs spontaneity, creativity, and variety in addition to what already exists. If law schools can begin to implement substantial changes, they can start forging the path to gender equality, fairness in teaching practice, and create the chance for women and men to achieve equal success.

