

THE PUBLIC INTEREST AND THE POWER OF THE FEMINIST CRITIQUE OF LAW SCHOOL: WOMEN'S EMPOWERMENT OF LEGAL EDUCATION AND ITS IMPLICATIONS FOR THE FATE OF PUBLIC INTEREST COMMITMENT

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INTRODUCTION

Law schools have often been derided as training grounds for the elite.¹ This charge is not without substance. Most dramatically, sociological research has demonstrated that students who enter law school with a commitment to a career working in the public interest tend not to follow through on that commitment.² A notable, and unfortunate, flaw of many accounts of the effect of law school on public interest commitment is the failure to distinguish among the law school experiences of different groups.³ In particular, many scholars who have consid-

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1. The best known critique of law school is probably Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 595 (1982) (arguing that legal education is a process of deliberate ideological indoctrination of law students).

2. ROBERT V. STOVER, *MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL* 3 (1989) (describing a survey of the author's law school class showing that 33percent said they wanted a public interest job when asked at the start of their first year, but only 50percent as many gave that response at the end of law school). See also *infra* note 22 and accompanying text (discussing a survey of University of Wisconsin students); *infra* note 24 and accompanying text (discussing statistics on the number of students who intend to work in the public interest and those who actually do).

3. See *infra* § III.C (stating that studies on public interest commitment have paid compara-

ered how law school affects public interest commitment have failed to consider the difference experiences women and men have in law school. In this article, I seek to address this failing as I believe that this oversight has deprived the public interest critique of law school of valuable insights.

My inspiration to revisit the claim about law school's effect on public interest commitment came from a seminar presentation on student commitment to the public interest I conducted with a colleague at Columbia University School of Law. As part of that presentation, we arranged for a panel of three Columbia law students and one alumna, all of whom had come to Columbia with a commitment to public interest work, to speak on their experiences at law school.⁴ As these students (who were all women) discussed how law school affected their commitment to the public interest, I was struck by the way that their accounts of law school echoed so clearly accounts of the experiences which contribute to the greater unhappiness and isolation of women in law school.

Therefore, I have sought to discover the link between the experiences of women at law school and the fate of public interest commitment at law school. I begin, in Part I, by addressing the skeptic who doubts the significance of law school in students' career choices and reviewing the evidence of waning public interest commitment during law school. In Part II, I explore the role of law school in transforming law students. I demonstrate and explain the similarity between the accounts of the experience of women at law school and the fate of public interest commitment at law school, and suggest that modern feminist scholarship may therefore play a role in addressing this trend.

As a preliminary matter, let me make clear two assumptions on which this paper proceeds. First, it is assumed that law schools ought to respond to students' drift away from public interest commitment.⁵ This is not difficult to accept for those

tively little attention to women's law school experiences).

4. Of the four, one had graduated and worked as an attorney in a commercial law firm in New York where she did commercial and pro bono work; one was a 3L who had accepted a position with a New York law firm; one was a 2L who had accepted a legal services position and one was a 1L, who had committed herself to human rights work over her first law school summer. It had not been our intention to focus on the experiences of women but, given some of the findings related herein, it is perhaps not surprising that those students who seemed to best represent commitment to public interest were women.

5. See Jonathan O. Hafen, *Public Interest Law and Legal Education: What Rule Should Law Schools Play In Meeting the Legal Needs Crisis?* 2 B.U. PUB. INT. L.J. 7, 11 (arguing that law schools have contributed to the dearth of students pursuing public interest careers and, as such, should generally encourage students' interest in serving the public's needs).

who accept that lawyers ought to be the guardians of a fair and equitable legal system.⁶ Others might be persuaded by the ABA Model Rules of Professional Conduct which identify service of the public interest as a professional duty of lawyers.⁷ They might further be persuaded by the Association of American Law Schools' recognition that law teachers themselves have a professional duty to "assist students to recognize the responsibility of lawyers to advance individual and social justice."

A second assumption underlying this paper is that there is a distinction between "public interest" or "pro bono" work and other types of legal practice. Any definition of a "public interest" lawyer is problematic, depending as it does, on a conception of the public interest. It is perhaps useful to think of the work of lawyers as falling along a spectrum, at the one end of which are lawyers who work for private individuals or corporations who are well able to pay for legal services and seek only the advancement of their own interests. Few would advance an argument that this constitutes "public interest" work. At the other end are lawyers working for individuals or interests unable to afford adequate legal representation, which represents the most common conception of public interest work.⁸ This includes lawyers representing the private interests of the poor, as well as lawyers working for a social or political cause. In between, lie lawyers in government departments who assist the functioning of government as a prosecutor, a public defender or an attorney for a regulator or other government agency, or who work for smaller, noncommercial law firms.⁹ This work is sometimes, though not always, included in the conception of "public interest."¹⁰ I do not seek to advance a particular defini-

6. See generally Debra Burke, Reagan McLaurin & James W. Pearce, *Pro Bono Publico: Issues and Implications*, 26 LOY. U. CHI. L.J. 61, 63-69 (summarizing historical constitutional, practical, and ethical arguments for an obligation to perform pro bono work).

7. MODEL RULES OF PROFESSIONAL CONDUCT Rule 6.1 cmt. (1993). "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay The American Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually." ASSOCIATION OF AMERICAN LAW SCHOOLS, *Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities*, in HANDBOOK 86 (1996).

8. See STOVER, *supra* note 2, at 4 (defining public interest work as "legal representation of individuals and interests who would lack adequate representation if they had to rely exclusively on their own resources").

9. See Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 31 (including government lawyers as working in the public interest).

10. Compare Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 39 n.103 (opposing "public interest" and

tion here. The studies of waning public interest commitment identify this trend both when public interest work is defined narrowly and when it includes work further along the spectrum.¹¹ Where a study or account of law school uses a particular conception of public interest, however, I will make the nature of that conception clear.

I. THE EFFECT OF LAW SCHOOL ON PUBLIC INTEREST COMMITMENT

A. *A Preliminary Objection*

Before proceeding to discuss the power of law schools to transform their students' commitment to the public interest, let me address one objection that experience suggests will immediately leap to the minds of some readers: that law school is not the most important, or even a significant force in students' reassessment of their career goals. This argument holds that all kinds of things affect students' career choice, such as being in debt and having a better understanding of the realities of the practice of law than students had when they came to law school.¹² In short, some would say that law students grow up and become more realistic during the course of law school¹³ and law professors are kidding themselves if they think they can do anything about it. Perhaps the most skeptical of such people would say that the phenomenon I seek to address is, in large part, imaginary; because students over-report their commitment to public interest law on entering and in the early years of law school when it is easy to profess altruism.¹⁴ In the later years, they make more realistic choices that, on some level, they expected to make all along.¹⁵

Apart from the instinctive appeal this argument has for some, there is some support for it. In his memoir of Harvard law

"government" work) with Homer & Schwartz, *supra* note 9, at 31 (grouping "public interest" and "public sector" together).

11. *Id.*

12. See *infra* text accompanying notes 21-27; see also *id.* at 75 (noting that one realization students make after law school is that they will "turn their back on affluence" for the rest of their lives if they choose a public interest job).

13. See STOVER, *supra* note 2, at 34-35 (finding that students come to view public interest and business jobs as "more similar in their opportunities for craft satisfaction" by the end of law school).

14. See STOVER, *supra* note 2, at 90 (positing that the shift away from a preference for public interest jobs is part of a process of maturation).

15. See Hafen, *supra* note 5, at 7 (stating that realism leads students to abandon their intent to pursue public interest law).

school, Richard Kahlenberg recalls why he went to law school. Although Kahlenberg wrote in his application essay of his desire to "work within the law to make life a little more fair for people,"¹⁶ he admits:

But there was within me another voice, one from my adolescence, which somehow never found its way into my application essay. As a kid, I had wanted to be a lawyer primarily because my grandfather was one. Grandpa was distinguished, respected, esteemed, and successful—which is to say loaded. In applying to law school, I was not unaware that a Harvard Law degree could be parlayed into a great deal of wealth.¹⁷

It is perfectly possible that the preferences students express at the beginning of law school overstate their commitment to public interest law. It need not be cast as hypocrisy on the part of students. They may, like Richard Kahlenberg, simply have failed to examine their motives accurately or, as is understandable, reassess their interests on discovering that commitment to the public interest in practice really is harder than in theory.¹⁸ But, as I will show, accounts of law school in the United States consistently describe it as a deeply affecting experience which causes students to reassess their most fundamental commitments.¹⁹ In the light of these accounts, the role of law school certainly merits serious attention.

I direct my attention, therefore, to considering the transformative nature of legal education. I do acknowledge, however, that a range of other influences are at work. Most of these have been discussed elsewhere and I will refer to them only briefly. First, the higher salaries (not to mention nicer offices, more support staff and a range of perks) available in private practice provide an incentive to abandon careers in the public interest.²⁰

16. RICHARD D. KAHLENBERG, *BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL* 3 (1992).

17. *Id.* at 3-4.

18. See STOVER, *supra* note 2, at 90 (discussing economic reality).

19. See studies cited *supra* § I.B and notes 48-49 (discussing studies done at the Universities of California at Davis and Wisconsin).

20. As a matter of common sense, the attraction of a higher salary is increased by the large educational debt many law students have. There is some evidence to suggest that the impact of debt may be overstated. See David L. Chambers, *The Burdens of Educational Loans: The Impact of Debt on Job Choice and Standards of Living for Students at Nine American Law Schools*, 42 J. LEGAL EDUC. 187, 199-200 (1992) (reporting that there is only a weak correlation between the level of law school debt and the acceptance of jobs in government, legal services or a small firm and that the more significant relationship is between grade point average and acceptance of work at a large firm). The impact of debt on career choice is also mitigated at some schools by loan forgiveness programs for students who enter public interest work. See Richard C.E. Beck, *Loan Re-*

Further, throughout their time in law school, law students' perceptions of legal practice change and often they come to regard a career in private practice as more appealing, in particular more exciting and intellectually challenging, than a public interest career.²¹ The communication of values by the legal profession, particularly during summer or part-time employment, is clearly influential in this regard²² as the values of the profession may not be supportive of public interest work.²³ The prestige accorded by the profession to private practice is quickly evident to students²⁴ and jobs at large firms become a sought-

payment Programs for Public Interest Lawyers: Why Does Everyone Think They Are Taxable? 40 N.Y. L. SCH. L. REV. 251, 252 (describing loan repayment programs at law schools). Despite this, the implication that debt has no impact on the decision to pursue a well paying career in a private firm is difficult to believe. Consider this comment made by a student at Boston University Law School as he neared graduation: "Money is still a goal When you're sitting there \$100,000 in debt, you don't know how to take anything less [than a corporate law firm salary]. People who want to go into public interest law are really sweating." Sandra Torry, *Decisions, Decisions: Students Divided on Cities, Career Paths*, WASH. POST, Oct. 11, 1993 at F7. See also Robert Granfield, *Constructing Professional Boundaries in Law School: Reactions and Implications for Teachers*, 4 S. CAL. REV. L. & WOMEN'S STUD. 53, 74 (stating that "[t]he importance of loan debt in limiting the options of law students cannot be too greatly underscored.").

21. KENNEDY, *supra* note 1, at 601.

22. See *infra* note 27. Most students will have at least one experience of working in a legal job during their time at law school and for the vast majority, that job will be in private practice. Stover reported that 75percent of the students in his study held at least one job with a private firm or solo practitioner. STOVER, *supra* note 2, at 61. At Columbia, only 22 students in the class of 1996 did not participate in the on-campus interview process for jobs in commercial law firms in the summer of their second year.

23. Few private practitioners take part in pro bono programs. See Michael Caudell-Feagan, *In Favor: Pro Bono and Legal Education*, 1 B.U. PUB. INT. L.J. 193, 194 (1991) (reporting that fewer than 20 percent of lawyers in private practice participate in pro bono programs); Joel F. Handler, Jane Hollingsworth, Howard E. Erlanger, & Jack Ladinsky, *The Public Interest Activities of Private Practice Lawyers*, 61 A.B.A. J. 1388, 1389 (1975) (finding that lawyers average 6.2percent of their time on pro bono work). Private practitioners moreover are unlikely to think highly of pro bono or public interest work. See Edward O. Laumann and John P. Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 1977 A.B. FOUND. RES. J. 155, 204 (1977) (explaining that the higher a legal specialty stands in its reputation for being motivated by altruistic concerns, the lower the prestige that it is likely to be accorded by the profession). Further, most students' summer jobs are not in public interest positions. It is widely recognized to be more difficult to obtain a summer job from a public interest organization than a job with a large law firm recruiting on campus. See Kahlenberg's account of obtaining summer employment. KAHLENBERG, *supra* note 16, at 37 (describing the difficulty of getting a public interest job). I should acknowledge, however, the enormous efforts some schools make to assist students finding public interest employment over summer. This includes schemes such as Columbia's Human Rights Internship program which places students with human rights lawyers around the world and Student Funded Fellowships which allow students to secure their own public interest placements.

24. A student in the Columbia Panel Discussion commented:

I'm on Law Review and of the 40 students in my class I'm the only one who didn't interview for firms. There is a complete expectation that you're going to do a federal court clerkship and then to one of the big New York firms... When I tell people I'm doing public interest, its like "you've got such great grades, such a good background,

after prize.²⁵ In a competitive environment like the law school this itself may draw students to it. Further, once obtained, a summer job may subtly affect a student's orientation toward the public interest and can eventually erode or qualify that commitment.²⁶

There is one factor external to law school to which, however, I will give more detailed attention. Of all the obstacles and distractions lying in the path of a student committed to public interest work, the scarcity of public interest jobs is particularly troubling.²⁷ It seems paradoxical to be concerned about students' tendency to prefer business-oriented work when there are more than enough applicants to fill the available positions.²⁸ Indeed public interest jobs are perceived as particularly difficult to get and many public interest organizations are flooded with resumes.²⁹ There are two conclusions that are tempting to draw from this scarcity of public interest jobs. The first, that students are choosing private practice because they have no choice, is unwarranted. While it may be true of some students, the evidence I will recount is that students' attitudes toward public interest work change during law school.³⁰ The drift away from public interest commitment is not entirely explained on the basis that students remain committed to it but

why are you doing that?"

Panel Discussion, Seminar on Legal Education, Columbia University (Dec. 7, 1995) (hereinafter "Columbia Panel Discussion") (on file with author).

25. As a classmate of Robert Stover's at the University of Denver commented, "[i]t's very prestigious, it really is - especially when you beat out people from Harvard." STOVER, *supra* note 2, at 65.

26. Stover relies on the theory of "cognitive dissonance" which suggests that psychological discomfort caused by association with values contrary to one's own, may lead to a modification of those values to achieve consonance. STOVER, *supra* note 2, at 62-3, citing LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1975). Some students to whom I suggested this at Columbia strongly denied any such effect, but one commented, "[a] lot of my friends who came into law committed to public interest are now going to firms. They say things like 'it's not so bad,' 'I've got to get training,' 'they do pro bono work...' there's a lot of rationalization that goes on." Columbia Panel Discussion, *supra* note 24. The theory of cognitive dissonance is also invoked by ROBERT GRANFIELD, *THE MAKING OF ELITE LAWYERS: VISIONS OF LAW SCHOOL AT HARVARD AND BEYOND* 144 (1992) (referring to the contradictions in people's lives as cognitive dissonance).

27. Luiz E. Zubrow, *Is Loan Forgiveness Divine? Another View*, 59 GEO. WASH. L. REV. 451, 572 (1991) (stating that many observers say that there are fewer public interest positions than people who want them).

28. *Id.* (Citing evidence that suggests that loan forgiveness programs may "simply increase the number of disappointed public interest job seekers").

29. See generally, Barbara Benson, *Case Closed for Lawyers: Law School Grads Find Few Job Opportunities*, CRAIN'S N.Y. BUS., Mar. 27, 1995, at 3 (stating that government budget cuts have eliminated many public interest jobs).

30. See *infra* § I.B (documenting the change in students' attitudes towards public interest work).

are frustrated by the market.³¹ The second, and perhaps this is suggested by other parts of the discussion as well, is that the difficulties of entering public interest work are such that law schools can have no role in addressing this.³² I argue, however, that the scarcity of public interest work should not lead to an abandonment of concern with students' career choices. It may be inescapable that, with the scarcity of public interest jobs and financial sacrifice required to do public interest work full-time, most students will enter private practice. However, there is a real need for lawyers in private practice to perform pro bono services for that large sector of the population who neither qualify for government legal aid nor can afford to pay for legal services.³³ Graduates with a commitment to the service of the public interest will demand the opportunities to do such work from their employers.³⁴ Law firms, which compete for graduates, will respond.³⁵ If pro bono work is an attractive feature of a working environment, law firms will accept that they have to provide it in order to attract the graduates they want.³⁶

Although the difficulty of obtaining or affording a public interest job should not dissuade law schools from acting, it should cause them to reassess their goals. If it is inevitable, that many, or indeed most, of their students will ultimately enter private practice, law schools should aim to encourage all students to recognize that the service of public interest is part of the role of lawyers, not a specialty to be pursued by a morally exalted few. I think that this kind of reassessment of goals can be achieved without returning to the concept of the legal profession as a

31. See STOVER, *supra* note 2, at 98-100 (establishing that students' pessimism about their ability to get a public interest job accounts for less than 15percent of the change in job preferences).

32. *Supra* note 22 and accompanying text (noting the scarcity of public interest jobs).

33. See Hafen, *supra* note 5, at 9 (stating that the need for free legal services is greater now than ever before due to increasing poverty and declining government funding).

34. See Burke, McLaurin & Pearce, *supra* note 6, at 77 (stating that offering opportunities to do pro bono work will help firms attract recent law school graduates).

35. See Ronald H. Silverman, *Conceiving a Lawyer's Duty to the Poor*, 19 HOFSTRA L. REV. 885, 931 (1987) (describing creative law firm pro bono programs such as opening an office in low-income neighborhoods, "lend-a-lawyer" programs and a generous pro bono fellowship program funded by Skadden Arps).

36. There are, of course, some firms that have already responded to this kind of pressure. Several New York firms, for example, allow students to split their summer employment with Legal Aid or another public interest organization; require summer associates to do pro bono work with the firm or elsewhere; and link with specific legal services offices. Others do significant pro bono work or fund fellowships for public interest lawyers. See Silverman, *supra* note 35, at 931. Pressure to do pro bono work will inspire even more of these programs.

noble one which is inherently public spirited.³⁷ Legal services clearly cannot be adequately provided through the benevolence of private lawyers³⁸ and there is a real difference between pursuing a career in private practice and as a public interest lawyer. My point is only that, in the face of the enormous pressures to enter private practice, there is still some reason for law schools to be concerned about public interest commitment. Through a broad conception of the public interest work students might do, law schools can encourage their students to make real contributions to the public interest.

B. *The Evidence of Waning Public Interest Commitment*

Students' waning commitment to the public interest during law school has been well documented. An early and detailed study of the effect of law school on student commitment to the public interest was conducted by Robert Stover between 1977 and 1980 at the University of Denver.³⁹ Stover studied the experiences of his classmates over three years, focusing on their initial career preferences and ultimate career choices.⁴⁰ Stover asked students entering law school to identify which job they would most like as an initial full-time job after graduation.⁴¹ They were asked to choose from a list of jobs under three headings: "Public Interest Jobs," "Other Government Jobs," "Business Oriented Private Firms," and "Other Private Firms."⁴²

37. See ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES*, 5 (1953) (describing the profession as "a group ... pursuing a learned art as a common calling in the spirit of public service no less a public service because it may incidentally be a means of livelihood.").

38. See Cynthia R. Watkins, *In Support of Mandatory Pro Bono Rule for New York State*, 57 Brook. L. Rev. 177, 182 (explaining that "[t]he legal problems of the poor are best handled by professionals experienced in the field and available full-time to handle cases...").

39. STOVER, *supra* note 2 at 6. Stover analyzed a change in students from interest in public service careers to interest in more business-oriented careers over the course of the three year law school program using the class of 1980. His analysis is based on information gathered from both surveys and interviews of students as they progressed through law school. Stover also incorporated his own observations of his classmates, as he himself was a law student while he conducted this study. The students who participated in Stover's study were not aware that he was specifically interested in their commitment or lack thereof to public interest work. STOVER, *supra* note 2, at 7.

40. STOVER, *supra* note 2, at 6.

41. STOVER, *supra* note 2, at 13.

42. STOVER, *supra* note 2, at 11. The public interest jobs listed were work as an attorney for one of the following organizations: the ACLU, a legal aid or legal services office, an organization working for a racial minority group, a public defender, a non-profit group working in environmental or consumer law, a public interest lobby group (where the work included litigation and lobbying), a small firm that does large amounts of free public interest work or a federal agency in the social services area.

When they entered law school, 33percent of the class rated a public interest job as their ideal first job.⁴³ Three years later, 16percent made that choice.⁴⁴ By contrast, Stover recorded an increase in attraction to business oriented jobs.⁴⁵

Stover's findings are consistent with other studies at the time. A similar decline in intention to pursue a career related to the public interest was reported at the University of California at Davis.⁴⁶ This study and one conducted at the University of Wisconsin noted a decline during law school in the importance students attached to the opportunity to do pro bono or social reform work.⁴⁷ This last finding is significant as it tracks, not just a change in career choice, but a change in the attitude of students toward pro bono or public interest work. Moreover, it is consistent with findings that few private practitioners use their positions to work in the public interest part-time.⁴⁸

43. STOVER, *supra* note 2, at 13.

44. STOVER, *supra* note 2, at 13.

45. STOVER, *supra* note 2, at 57. The "drift" of students' career goals away from public interest law is illustrated by the experience of one of Stover's study participants, Sharon Lollar. Sharon had a background in social work prior to beginning law school. In Stover's first questionnaire given in the first semester of law school, she indicated that her preference for her first job after graduation was to become "involved with the ACLU." By the end of her second year, Sharon stated with regard to her career goals,

It's changing for me because ... I'm thinking more on the lines of a small firm doing ... I don't know ... not necessarily any sort of specialty. But I'm getting more interested in property law—stuff like that ... I've pretty much changed my mind from doing a poverty law—type of thing to doing whatever comes in the door.

Id.

46. Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, JURIS DR., Dec. 1976, at 34 (reporting that of students in the University of California, Davis Law School class of 1975, 37percent entered law school intending to pursue a career as a "movement," "poverty" or "public interest lawyer." Further at the beginning of the third year only 22percent had the same aspiration and, of the 7percent who entered law school intending to be a criminal defender, only 3percent had the same intention. The other options available to students in the survey were civil trial lawyer, tax lawyer, "general practitioner not covered above," "government lawyer not covered above," law professor, businessman, politician, other and "don't know." The survey also showed a change in students' motivation for the practice of law.).

47. *Id.* The survey showed that over three years of law school, the percentage of students who nominated their prime motivation as "to alleviate social problems" fell from 32percent to 20percent. The percentage citing their desire "to help individuals" declined from 25percent to 14percent. See also Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School: The Law School Experience and Student Orientations to Public Interest*, 13 CONTEMP. L. & SOC'Y REV. 11 (1978) (reporting that on entering the University of Wisconsin law school in 1976, 26percent of students rated the opportunity to do pro bono work in their job as "definitely very important" and 28percent rated it as "definitely not important." Two years later only 16percent rated it as "definitely very important" while 56percent rated it as "definitely not important."). *Id.* at 27.

48. Caudell-Feagan, *supra* note 23, at 194. See also Handler, Hollingsworth, Erlanger & Ladinsky, *supra* note 23, at 1389. A study conducted in 1973-74 by the American Bar Association found that 60percent of the private practice attorneys who responded to the survey spent less than 5percent of their billable hours involved in public interest work. Nearly 50percent of these

Although concern about the socializing effect of law schools first arose in the 1970s, recent evidence supports the need for continuing concern. A study tracking the class 1994 conducted by the Law Schools Admissions Council showed that on entering law school, 9.35percent of students expressed a desire to work in the public interest although only 2.8percent of graduates ultimately did so.⁴⁹ Lani Guinier and her co-authors obtained similar results in a study of the experience of women students at the University of Pennsylvania Law School.⁵⁰ Students there were asked the following questions: "What kind of law do you expect to practice?" and "what kind of job do you expect to have after law school?"⁵¹ The results showed a lower level of expectation to practice in the public interest among third year students than their counterparts in the first year.⁵² Similar results have been found in a study at Boalt Hall (the law school of the University of California at Berkeley),⁵³ Harvard⁵⁴ and are supported by anecdotal evidence at Columbia.⁵⁵

respondents spent no time at all serving the public interest. See also JOEL F. HANDLER, ELLEN JANE HOLLINGSWORTH, & HOWARD S. ERLANGER, *LAWYERS AND THE PURSUIT OF LEGAL RIGHTS* ch. 5 (1978).

49. GRANFIELD, *supra* note 26, at 47 (reporting that "the last decade and a half has seen a steady decline in students' willingness to enter public interest law").

50. Guinier, Fine & Balin, *supra* note 10. See also MONA HARRINGTON, *WOMEN LAWYERS: REWRITING THE RULES* (1993) (revealing that of over 100 women interviewed, 1/3 stated that when they entered law school, they intended to have careers serving the public interest, yet very few of these women ultimately made careers in public interest law).

51. Guinier, Fine, & Balin, *supra* note 10 at 39-40 & n.103.

52. Guinier, Fine, & Balin, *supra* note 10, at 39-40. In answer to the first question, 33percent of 1L women indicated an expectation to practice in public interest law compared with 10percent of 3L women. In answer to the second question, the expectation of women to have a job in public interest law declined from 25percent to 8percent. For men the expectation remained constant at 7percent. There was no explicit definition of public interest law in this study. In response to the first question, students were free to choose from among the following categories: corporations, labor, litigation, public interest, estates, and bankruptcy. In answering the second question, students were given the following options: sole practitioner, law firm, government lawyer, corporate general counsel, non-legal corporate, foundation/university counsel, public interest.

53. Homer & Schwartz, *supra* note 9, at 31 (showing a drop in the percentage of students who intended to pursue a career in public interest over their three years of law school. This figures varied among men, women and people of color.).

54. GRANFIELD, *supra* note 26, at 47 (stating that "[f]irst year students at Harvard were more likely to begin their law school careers expressing interest in forms of practice other than large private firms. While there were certainly large numbers of students expressing interest in these law firms, the proportion was significantly less during the first year than other years.").

55. At Columbia University, the Assistant Dean for the Public Interest Program held a seminar on public interest law in the first month of the first semester in 1993. Over 100 students attended, large numbers of whom were able to convincingly articulate the basis of their commitment to public interest work. In the Spring of 1993 only 45 students attended a meeting to discuss alternatives to working as a summer associate in a large commercial law firm. In the end, only 22 students did not participate in the on campus interview process for jobs in com-

III. THE ROLE OF LAW SCHOOL IN THE TRANSFORMATION OF STUDENTS

A. *A Traditional Argument: Law School as Ideological Training*

Perhaps the most forceful and well known analysis of legal education is Duncan Kennedy's argument that law school serves as "ideological training for willing service in the hierarchies of the corporate-welfare state."⁵⁶ Kennedy makes three main points. First, he criticizes the teaching of law. The first year of law school is a humiliating experience in which the student learns that "your initial reaction of outrage is naive, nonlegal, irrelevant to what you're supposed to be learning ... [T]here are 'good reasons' for the awful result, when you take a legal and logical large view ... and if you can't muster those reasons maybe you aren't cut out to be a lawyer."⁵⁷ The teaching of cases and the Socratic method mystifies legal rules and legal reasoning, creating elitism.⁵⁸ Students are convinced of the superiority of their professors, as well as their own superiority and entitlement to reap the benefits of their knowledge in the form of six figure salaries.⁵⁹

Second, he argues that the faculty's treatment of students provides a model for students which encourages the acceptance of hierarchy.⁶⁰ Class rankings, given in a highly competitive environment with little feedback, teach students to "prepare themselves for all the hierarchies to follow."⁶¹ Law professors are overwhelmingly male, white, middle class, and obsessed with their status and superiority to students and other staff.⁶² Hierarchy is also reflected in the division in the curriculum between the rigorous and internally logical courses of the first year, the moderate policy-oriented second and third year courses and the peripheral courses "not truly relevant to the 'hard,' objective, serious, rigorous, analytic core of law."⁶³ All

mercial law firms the next fall. See also, KAHLBERG, *supra* note 16.

56. Kennedy, *supra* note 1, at 591.

57. Kennedy, *supra* note 1, at 591.

58. Kennedy, *supra* note 1, at 604.

59. Kennedy, *supra* note 1, at 607 (arguing that law school trains students to accept their subservience to law professors and the process as a whole).

60. Kennedy, *supra* note 1, at 604.

61. Kennedy, *supra* note 1, at 601.

62. Kennedy, *supra* note 1, at 593, 605.

63. Kennedy, *supra* note 1, at 597-98.

this provides students with training in subservience which, says Kennedy, is training for domination as well:

Nothing could be more natural and, if you've served your time, more fair, than that you as a group should do as you have been done to, for better and for worse.⁶⁴

Third, and important for these purposes, he argues that law school convinces students that they have no choice but to join a conventional firm.⁶⁵ For example, the attitude toward work for the poor is that it is "hopelessly dull and unchallenging and the possibilities of reaching a standard of living appropriate to a lawyer are slim or nonexistent."⁶⁶ Further, because law is taught without practical skills,⁶⁷ "[i]t seems hopelessly impractical to think about setting up your own law firm and only a little less impractical to go to a small or political or unconventional firm rather than one of those that offers the standard package of postgraduate education."⁶⁸

As one reviewer noted, Kennedy's account is "long on general theory but short on specific evidence."⁶⁹ The fact that Kennedy has apparently relied on his own experience of law school is particularly troubling given that Kennedy is a professor at Harvard and was a student at Yale. These elite law schools may not conform to the typical law school experience.⁷⁰ For example, he claims that law school does little to equip students for private practice, rendering them dependent on large firms for practical training.⁷¹ This is surely far less true of "non-elite" law schools which often focus attention on local law and procedure.⁷²

64. Kennedy, *supra* note 1, at 607.

65. Kennedy, *supra* note 1, at 601.

66. Kennedy, *supra* note 1, at 601.

67. Kennedy, *supra* note 1, at 601.

68. Kennedy, *supra* note 1, at 602.

69. *Book Note*, 82 MICH. L. REV. 961, 963 (1984) (reviewing Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (1983)).

70. *America's Best Graduate Schools: Law Schools*, U.S. NEWS & WORLD REP., Mar. 18, 1996 at 8283, 8286 (ranking the nation's law schools according to factors such as student selectivity, placement success, faculty resources and institutional reputation. In 1996, Yale University was ranked #1 and Harvard University was ranked #2 in the overall category. This makes them the top 2 law schools in the country, qualifying them for "elite" status.).

71. Kennedy, *supra* note 1, at 601.

72. See John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education*, 43 EMORY L.J. 393, 457 & n.222 (1994) (discussing the fact that "elite" or "national" law schools and "regional" law schools have different purposes and customers. National law schools train students to explore new ideas in the law, influence legislation, and produce scholarly pub-

Moreover, Kennedy's account is fortunately somewhat outdated today. Much of what he and others have said has been taken to heart.⁷³ He wrote as if Professor Kingsfield still dominated legal education when there is much evidence that he does not.⁷⁴ It is undoubtedly true that traditional teaching methods are still used and that many teachers are traditional and hierarchical in their relationships with students.⁷⁵ But there has been progress. In my own experience of law school as a student and teacher, few professors now use a form of Socratic method *entirely* unmodified by concern not to humiliate the student.⁷⁶ Few really believe that law has its own internal logic that can be taught *entirely* without reference to policy.⁷⁷ Nevertheless, much of what Kennedy writes is echoed in other accounts of law school.⁷⁸ His analysis provides a starting point for a more concrete analysis of the effects of law school.⁷⁹

B. Other Accounts of Law School.

What the more detailed, perhaps less polemical, accounts of the law school experience have in common with Kennedy's analysis is a portrayal of law school as a powerful transformative

lications. Regional and local law schools serve to produce competent lawyers who will practice in the local community.).

73. *Id.* at 445-46.

74. See Catherine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155, 156-57 (1988).

75. See STOVER, *supra* note 2, at 58-59 (discussing the influence of Christopher Columbus Langdell on American legal education. Langdell became Dean of Harvard Law School in 1870, and created the "case method" form of teaching legal doctrine. Stover suggests that law professors today may feel forced to use the case method, not because it is the "best" way to teach legal concepts, but because it has been recognized as superior for so many decades.).

76. In a recent humorous column written by a law student (from the University of California at Los Angeles), the author relates that he exaggerates the effect of law school:

[T]o hide a secret shame, the thing that divides me from generations of lawyers who ran the gauntlet of legal education more than a decade ago. The fact is, it isn't that bad.

I try to keep from revealing this to my lawyer friends... Law School today has been humanized to the point where it is not a diabolical ordeal by Socratic method, but actually resembles something like a rigorous professional training program.

T.E. Adler, *Law School's Dirty Secret*, THE NAT'L JURIST, Feb.- Mar. 1996 at 46. See also STOVER, *supra* note 2, at 48. Regarding the use of the Socratic method at the University of Denver: "During the fall and winter quarters of the first year, all my professors made a genuine effort to treat students in a compassionate manner." Stover points out that if a student seemed confused or perplexed by the material in class, professors did not reprimand or humiliate them, contrary to the folklore of the Socratic method.

77. See Hantzis, *supra* note 74, at 160 (1988).

78. See GRANFIELD, *supra* note 26; Kahlenberg, *supra* note 16.

79. See also Homer & Schwartz, *supra* note 9, at 21-22 (arguing that Kennedy's analysis fails to account for the complexity of student response to law school or to recognize that the experience of being an "outsider" can be a source of strength).

experience.⁸⁰ Law students are so immersed in a new culture and overwhelmed by the demands placed on them, that they are much changed by the struggle to adjust.⁸¹ Some of the best known accounts of this process of socialization are of Harvard Law School.⁸² These may be viewed with some suspicion as to their general applicability, since Harvard has a particular mystique attached to it which may affect the expectations and experiences of its students. Accordingly, I will focus this discussion on accounts of four law schools at which the experiences of law students have been remarkably similar: Columbia, University of Denver, University of Pennsylvania and Yale. Admittedly, three of these are considered "elite" law schools,⁸³ and perhaps they should be viewed with the same suspicion as is had for the accounts of Harvard. But the inclusion of the University of Denver and the similarity of the accounts at that law school is reassuring as to their general applicability.⁸⁴

Students almost uniformly refer to the first year of law school as a difficult time.⁸⁵ The causes of the stress and tension in first year are well known (workload, Socratic method, competition between students, relocation of many students, tension in personal relations which results from separation or time spent at

80. See GRANFIELD, *supra* note 26, at 87-93 (discussing the changes in moral and legal identity that law students undergo during the course of law school).

81. See GRANFIELD, *supra* note 26, at 54-56 (discussing the process of developing the skill of "legal justification" among law students in analyzing judicial opinions and the effect that justification has on their perception of their own personal values).

82. The most famous accounts of Harvard Law School are JOHN JAY OSBORNE, *THE PAPER CHASE* (1971) (including the film version *THE PAPER CHASE* (20th Century Fox 1973)) and SCOTT TUROW, *ONE L* (1977). The accounts which most reflect waning public interest commitment are GRANFIELD, *supra* note 26, a detailed empirical study, and KAHLENBERG, *supra* note 16.

83. *America's Best Graduate Schools*, *supra* note 70, at 8286 (showing that Columbia University, the University of Pennsylvania and Yale University are each ranked within the top 10 of all law schools in the United States for 1996).

84. Significantly, a colleague at Columbia who attended Fordham Law School (which, like Denver, is more likely to be representative of the bulk of American law schools) was struck by the similarity of Stover's account with his experience of law school. STOVER, *supra* note 2, at 3.

85. Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research?, Writing?, Analysis?, or More?*, 100 DICK. L. REV. 245, 278 (1996) (noting the "increasing, and potentially dangerous, level of stress among first year law students"). See also Leon E. Trakman, *Law Student Teachers: An Untapped Resource*, 30 J. LEGAL EDUC. 331, 332 (1979) (Noting that the formal, impersonal relationship between students and faculty contributes to the ability of first year students to integrate themselves into the law school system); Thomas L. Shaffer & Robert S. Redmount, *Legal Education: The Classroom Experience*, 52 NOTRE DAME L. REV. 190, 194-95 (1976) (recounting the diary entries of law students from their first semester describing the difficulties of adjusting to the law school atmosphere and work load); Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1202-04 (1968) (discussing the multiple reasons for "failure-anxiety" among first-year students, including high expectations, the method of instruction, and the difficulty of learning a new method of study).

law school).⁸⁶ They need not be recited in detail here. What is important to consider is that the first year of law school may wear students down in a way which affects the commitments and ideals they had when they arrive at law school.⁸⁷ The following comments, from Robert Stover's study of the University of Denver and the panel discussion I conducted with a colleague at Columbia University, provide some of the flavor of the first year experience.

At the University of Denver in 1974:

The people I talk to at school - I sometimes just have to get away from them because they upset me so much ... Sometimes I find they shake me - it's not my confidence; the competition I guess will just shake me up.⁸⁸

At Columbia University in 1995:

It's an incredibly stressful time when you are trying to plow through and keep your head above water ...⁸⁹

It was not Stover's intention to focus on the experience of women. Neither was it mine, originally. But in each case these comments were made by women and they are echoed clearly in major studies of the experience of women at law school.⁹⁰ The following comments come from well-known studies of women law students at Yale and the University of Pennsylvania:

At Yale University in 1985:

Law school consumes a lot of the rest of my life. It's a strug-

86. See generally, STOVER, *supra* note 2, at 46; Faith Dickerson, *Psychological Counseling for Law Students: Lone Law School's Experience*, 37 J. LEGAL EDUC. 82, 84 (1987); Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 285 (1979); B. A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 655 (1991); G. Andrew H. Benjamin, Alfred Kaszniak, Bruce Sales, and Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, AM. B. FOUND. RES. J., Spring 1986, at 225; Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985).

87. STOVER, *supra* note 2, at 10. This "wearing down" of students as they progress through law school is exemplified by the experience of "Nelson," one of the students in Stover's study at the University of Denver. At the end of his first quarter of law school, Nelson stated that he wished to pursue a career in public interest law. He acknowledged, though, that his goal could be changed, because of the process of law school seemed to "corrode what once had been clear cut moral certainties." He stated, "Sometimes I wonder. The more law school I have, the more I wonder." STOVER, *supra* note 2, at 10.

88. STOVER, *supra* note 2, at 48.

89. Columbia Panel Discussion, *supra* note 24.

90. Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988). See also Guinier, Fine & Balin, *supra* note 9, at 3 (detailing the different academic performance of men and women in law school. The authors note that despite identical entry-level credentials, from the first-year, men and women perform differently and maintain different attitudes about law school.).

gle to stay connected with [my husband] and friends.⁹¹

At the University of Pennsylvania in 1994:

Law School is the most bizarre place I have ever been ... [First year] was like a frightening out of body experience.

[F]or me the damage is done; it's in me. I will never be the same. I feel so defeated.⁹²

These comments supports the conclusion that "first year students are so consumed with coping with their immediate environment that other matters often recede from the forefront of their concern."⁹³ Overwhelmed, law students appear to reassess their values.⁹⁴ The uncertainty and loss of confidence they suffer causes them to doubt the commitments they had when they came to law school.⁹⁵ Again, this is evident both in studies of student commitment to the public interest and of women's experience at law school:

At the University of Denver:

I'm more confused than before. It's more like I just don't think about it [a career helping others] that much. When I first started law school, I had all these ideas about what I wanted to do, and now I just think about coming here and doing the work.⁹⁶

At Columbia:

Everything you think is being challenged.. all your old opinions are being devalued. I came to doubt myself extremely in everything and not just the way I analyze a case but also... maybe my decision to work in public interest is wrong.⁹⁷

At Yale:

[Law School] takes a bunch of people who are smart and have goals and opinions and convinces them that if they can't express themselves in a certain way, the goals are illegitimate. The place robs people of their direction and conviction.⁹⁸

At the University of Pennsylvania:

91. Weiss & Melling, *supra* note 90, at 1316.

92. Guinier, Fine & Balin, *supra* note 10, at 4.

93. STOVER, *supra* note 2, at 50. See generally Stephen B. Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985); Benjamin, Kaszniak, Sales & Shanfield, *supra* note 88.

94. STOVER, *supra* note 2, at 50-51.

95. STOVER, *supra* note 2, at 51.

96. STOVER, *supra* note 2, at 51.

97. STOVER, *supra* note 2, at 51.

98. Weiss & Melling, *supra* note 90, at 1352 n.7.

[W]hatever ideals we came in with they get bashed out of us.⁹⁹

It is not easy, therefore, to deny the effect law school has on students by arguing that they are adults with well-formed ideals and are therefore not susceptible to the transformation law school is claimed to cause. The exhaustion and uncertainty instilled by first year leads students to reassess their views. Law school, it seems, plays a role in the reformation of these ideas.¹⁰⁰

C. *The Importance of the Experience of Women*

In each case above, I have shown the similarity between the accounts students at Denver and Columbia gave when discussing law school's effect on their public interest commitment, with the accounts given in studies of women's law school experience at Yale and Penn. Despite the striking similarity, there has been comparatively little attention to women's experiences in assessing the fate of public interest commitment in law school. This oversight is regrettable because the similarity between women's accounts of law school and those accounts addressing public interest commitment in law school, is no accident. A finding of some recent studies focusing on the experience of women at law school is that women are more likely to have a public interest commitment on entering law school. The University of Pennsylvania study reported that thirty-three percent of women entered law school with a desire to work in the public interest compared with seven percent of men.¹⁰¹ The Boalt Hall study showed that thirty-five percent of white women and thirty-one percent of women of color entered law school with an intention to work in the public sector or in a public interest job on graduation, compared with thirty-one percent of men of color and eighteen percent of white men.¹⁰²

99. Guinier, Fine & Balin, *supra* note 10, at 43.

100. STOVER, *supra* note 2, at 50.

101. Guinier, Fine & Balin, *supra* note 10, at 39-40. See also Robert Stevens, *Law Schools and Law Students*, 59 Va. L. Rev. 551, 611-615 (1973) (reporting that significantly more women than men enter law school with a desire to restructure society or to be of service to the underprivileged); Georgina Williams La Russa, *Portia's Decision: Women's Motives for Studying Law and Their Later Career Satisfaction as Attorneys*, 1 PSYCHOLOGY OF WOMEN QUARTERLY 350, 355 (1977) (reporting that of eight categories of motivation given by women attorneys for entering law school the two primary motivations were "realistic" (emphasizing the practical and material aspects of a legal career) and "altruistic". Of the women attorneys studied, 57.5percent referred to "realistic" motivations for entering law school and 52.5percent referred to "altruistic" motivations.).

102. Homer & Schwartz, *supra* note 9, at 31.

Further, accounts of women's experience at law school suggest that women feel its demoralizing effects most keenly. They participate less in class,¹⁰³ because they are less comfortable in law school. In particular, they are less comfortable with the Socratic method, especially the argumentative polarized nature of discussion encouraged in many classrooms.¹⁰⁴ Women also perceive that they receive less professorial attention in and out of class¹⁰⁵ and less peer acceptance of their views. Women students frequently report that their participation is met with scorn and hostility.¹⁰⁶ They are also more isolated from the content of legal education as they are unhappy with the unemotional, detached nature of legal analysis.¹⁰⁷ Lani Guinier's study reports that "laced throughout the interviews with both white women and, to a greater degree, women of color, we hear the desire to reinsert culture, race, politics and 'emotion' back into legal interpretation."¹⁰⁸

The result is that the debilitating effect law school, and in particular of the first year, which is so important in the reassessment of career goals, affects women more. Women students experience more emotional distress and loss of confidence.¹⁰⁹ Much of this unhappiness is focused on the first year and many

103. See Taunya L. Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 141-42 (1988) (discussing findings that 44.3percent of men surveyed participate voluntarily in class on a weekly basis, compared to only 32.1percent of women surveyed); Homer & Schwartz, *supra* note 9, at 37-38 (hypothesizing that the reason behind their findings of low participation by women is centered on a reluctance "to compromise the integrity of their beliefs by submitting them to the narrow analytical perspective of the law school classroom"); Guinier, Fine & Balin, *supra* note 10, at 32-33 (noting that female students report, more often than male students, that they "never" or "only occasionally" volunteer in class).

104. Weiss & Melling, *supra* note 90, at 1338-1339.

105. Weiss & Melling, *supra* note 90, at 1337-1338.

106. Weiss & Melling, *supra* note 90, at 1328; Guinier, Fine & Balin, *supra* note 10, at 64; GRANFIELD, *supra* note 26, at 99.

107. See generally Weiss & Melling, *supra* note 90, at 1345-1355 (linking their study to Carol Gilligan's theory that men and women employ distinct types of moral reasoning documented in Carol Gilligan, *In Different Voice: Psychological Theory and Women's Development* (1982)); GRANFIELD, *supra* note 27 at 97-8 (noting that many women law students felt "personal alienation" and marginalized in their legal education). But see Janet Taber, Marguerite T. Grant, Mary T. Huser, Rise B. Norman, James R. Sutton, Clarence C. Wong, Louise E. Parker, & Claire Picard, *Gender, Legal Education and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 Stan. L. Rev. 1209, 1240 (1988) which did not find significant differences in the way men and women responded to certain hypotheticals.

108. Guinier, Fine & Balin, *supra* note 10, n.122.

109. Guinier, Fine & Balin, *supra* note 10, at 45 (noting that "women are significantly more likely to report eating disorders, sleeping difficulties, crying and symptoms of depression or anxiety"); Homer & Schwartz, *supra* note 9, at 33 (stating that "51percent of women agreed with the statement that although they felt intelligent and articulate prior to law school, they did not feel that way at Boalt. Only 29percent of men agreed with that description.").

women may recover from the worst of its effects¹¹⁰ but, in some cases at least, the first year is sufficiently traumatic that women are permanently affected.¹¹¹

This suggests that women are both more likely than men to enter law school with a commitment to a career in the public interest and, perhaps because of this, more susceptible than men to the experiences which appear to demoralize students and persuade them to reassess their goals. The experience of women therefore appears to be worthy of special attention in considering the waning of students' commitment to the public interest. Of course, reactions to law school are determined only partially by gender. Race is particularly likely to be a significant factor and could be dealt with by itself in a article of at least this length as could the significance of sexual preference and class.¹¹² In this space, however, I only attempt to address the experience of women.

Before proceeding, I should note one notable exception to this failure to consider the experience of women among studies of public interest commitment in law school. Robert Granfield devotes a chapter of his study of Harvard law school, *The Making of Elite Lawyers*,¹¹³ to this issue. Granfield's principal point, however, is that the experiences of women at law school vary. Some women's experience bears out the feminist critique of law school just described. Consider the student in Granfield's study who said:

110. Guinier, Fine & Balin, *supra* note 10, at 37, 59 (first year women feel the most isolated in the class room and perceive the most gender bias).

111. Guinier, Fine & Balin, *supra* note 10, at 43-4 (noting the following interaction observed between male and female students: One male student stated: "After my first year I realized that I was making a mountain out of a molehill." A female student then responded: "But you're not listening to what [the previous speaker] said." She said, "It entirely shook my faith in myself I will never recover. Some of us just sunk deeper and deeper in a mire, and just kept sinking lower and lower." Another female student agreed: "That's right. I used to be very driven, competitive. Then I started to realize that all my effort was getting me nowhere. I just stopped trying; just stopped caring. I am scarred forever.").

112. The study of Boalt Hall students suggests that race is a significant factor in law school experience. Women of color appear to suffer most at law school, participating the least in class and suffering more from loss of confidence than white women. Similarly, men of color have a different experience from white men. They are, for example, more likely to experience loss of confidence in law school than white men. Homer & Schwartz found that 57percent of women of color, 50percent of white women and 41percent of men of color agreed with the statement that although they felt intelligent and articulate prior to law school, they did not feel that way at Boalt. Only 25percent of white men agreed with that statement. Homer & Schwartz also suggest that sexual orientation may be a significant factor affecting experience of law school, but it is not addressed by their study. *Supra* note 10, at 5 n.5, 33. For a discussion of the significance of class, see GRANFIELD, *supra* note 26, at 109.

113. GRANFIELD, *supra* note 26.

The first thing you realize about this whole experience is that you're judged by male standards. When you're in class you're supposed to be analytical and rational as opposed to getting down to reality. You lose sight of what's at stake. It matters to me who lawyers represent, what is at stake, and the people involved. For me, it's the process that's important. However, that is not what is emphasized here, that is not what we are supposed to be discussing.¹¹⁴

But there are others, who Granfield labels "equity feminists," who find law school to be a challenging, but fair and enriching experience.¹¹⁵ These women are likely to see law school as a means for achieving equality with men and are less likely to seek social transformation through law. Consider this student:

I haven't experienced any problems as a woman here and I don't expect to. I know a lot of women here bring these problems on themselves. They get upset when a professor uses a masculine pronoun or that the cases in the text books most often involve men. My roommate is very concerned about discrimination against women. She feels everyone is out to get women. If you act like a normal human being you'll be fine. There's no difference in the opportunity between men and women here. I think that at times she's childish.¹¹⁶

Granfield contrasts the experience of these women with that of "social feminists" who are more likely to have entered law school with altruistic aspirations and who seek social transformation through law. This understanding of the experiences of women at law school is valuable.¹¹⁷ It should caution us from an essentialist view of women's experience at law school. After all, if an experience of law school is described as the definitively female experience, then its authority and the persuasiveness of the critique it puts forward, is undermined by the fact that it is not shared by all women. It is unfortunate though, that the complexity of women's experience at law school leads Granfield away from focusing on the critique of law school which so many women offer. The dissatisfaction so many women experience with the emphasis on the dispassionate and dehumanizing nature of legal analysis is valuable to our understanding of the fate

114. GRANFIELD, *supra* note 26, at 98.

115. GRANFIELD, *supra* note 26, at 101, 94-108. See also Robert Granfield, *Contextualizing the Different Voice: Women, Occupational Goals and Legal Education*, 16 LAW AND POL'Y 1 (1994).

116. GRANFIELD, *supra* note 26, at 106.

117. Guinier, Fine & Balin, *supra* note 10, at 56-7 (pointing out that some women deal with the law school culture very well. In Guinier's terms, they "become gentlemen.").

of public interest commitment at law school.

Law teaching has long been recognized as an important factor by those who have studied the transformation of law students.¹¹⁸ Kennedy's analysis of the depoliticizing nature of law teaching, which I have already discussed, is not the only critique. Robert Granfield himself argues that legal analysis is partly responsible for the transformation of students, which draws them away from public interest work. He focused on three features of legal education: learning to justify opinions on "legal grounds as opposed to ideological or substantive ones";¹¹⁹ the ability to distinguish apparently similar cases and to draw parallels between apparently dissimilar cases and so discover a logical thread running through the law;¹²⁰ and the ability to argue for apparently opposing positions.¹²¹ These techniques dominate legal education because both students and faculty participate in establishing boundaries of acceptable argument, excluding the ideological and the emotional.¹²² Immersed in this intellectual culture, Granfield argues, "students internalized a perspective of detached cynicism,"¹²³ and as a result become detached from the study of law, do not look to involvement in the law as a way of achieving social justice.¹²⁴

It is important not to overstate these critiques and to appreciate that contemporary legal education has some value. First, there has been some response in legal education and law teaching to these kinds of critiques. I have already indicated my skepticism at the accuracy of the claim that law is commonly taught as if it were entirely separate from "policy" and I am also skeptical that law is always taught as if "legal" grounds were entirely separate from "ideological" or "substantive" grounds. I find it hard to believe that all law professors are utterly indifferent to the moral and ideological bases of the law and teach their students to be so. Part of legal education, in most law

118. It is hard to see why professors would have a direct interest in encouraging their students to enter private practice. After all, they represent a decision to pursue a career largely outside of practice of any kind and many are active in the service of the public interest. More persuasive is the argument that the methods of teaching law indirectly and unconsciously convey an attitude about being a lawyer which affects students' attitudes to the pursuit of a public interest career.

119. GRANFIELD, *supra* note 26, at 55.

120. GRANFIELD, *supra* note 26, at 56.

121. GRANFIELD, *supra* note 26, at 58.

122. GRANFIELD, *supra* note 26, at 74 - 81.

123. GRANFIELD, *supra* note 26, at 63.

124. GRANFIELD, *supra* note 26, at 65.

schools, is devoted to determining what social interests law serves, what social needs it should serve and what costs it imposes.¹²⁵ Indeed, the understanding of the political nature of law and the interests it serves has been the contribution of first the realists and now critical legal theorists.

Second, there is a failure to appreciate that there is some point to traditional modes of legal thought and traditional legal education. Traditional legal skills are an essential part of legal education.¹²⁶ All lawyers, including, and perhaps even especially, those who work in the public interest, need substantive knowledge of law, the skills of dispassionate, rational analysis, the capacity to think on their feet and advance their claim in an intimidating environment.¹²⁷

Nevertheless, the accounts of women of their law school experience helps us discern an important element in those critiques that claim law teaching is hostile to public interest commitment at law school.¹²⁸ A theme that emerges strongly in accounts of law school focusing on the experience of women and those focusing on public interest commitment is the lack of attention to the emotional and human stories which underlie the law:

At Columbia:

There is a whole world, a whole universe going on outside our case book and we never even seem to recognize or to talk about that.

It's very dehumanized ... very much based on the theoretical as opposed to something that makes it more personal.¹²⁹

At Yale:

The recklessness, the casual "well let's look at it this way, let's spin it around and look at it from this angle" stance that others seemed to achieve—I just couldn't. So in my first few weeks I

125. See Daniel A. Cohen, Book Note, 92 MICH. L. REV. 1737 (1994) (reviewing Robert Granfield, *The Making of Elite Lawyers*, (1992)).

126. See GRANFIELD, *supra* note 26, at 52 (noting that "[t]he laurels of the legal profession ... hang on the finely-tuned intellectual talents of its members").

127. See GRANFIELD, *supra* note 26, at 54-61 (discussing various legal skills taught to law students, including legal analysis and the ability to advance legal arguments); Shauna Van Praagh, *Stories in Law School: An Essay on Language, Participation, and the Power of Legal Education*, 2 COLUM. J. GENDER & L. 111, 117 (1992) (stating that law students "must learn to think, argue, and write clearly and persuasively if they are going to use their education in law practice.").

128. See also *supra* part I.C (discussing women's public interest commitment at law school).

129. Ronald Chester & Scott E. Alumbaugh, *Functionalizing First Year Legal Education Toward a New Pedagogical Jurisprudence*, 25 U.C. DAVIS L. REV. 21, 25 (1991).

was really in shock.¹³⁰

It bothers me that some professors enjoy talking about things for the hell of it ... You're taught to masturbate with ideas. You play with ideas, but you're never taught to deal with reality Most lawyers are intensely talky and rational. So much of life is neither rational nor susceptible to being put into words ... suffering, for instance.¹³¹

This is sometimes expressed as a lack of context or reality, but it is perhaps expressed as a lack of a basis for personal connection.¹³² This is a valuable insight into the transformative process. Often, the impulses which have led many students to law school are emotional impulses such as concern for the underprivileged or empathy with a social or political cause.¹³³ If students are motivated to come to law school by a concern for people or a belief in a social and political cause, that is, if they came to law school because they *care* about something, it should not be surprising to us that they react poorly to large helpings of careful analytical thinking, as important and intellectually stimulating as that may be. Considering how law school comes to dominate their world, it is not surprising that law students feel that their ideas are "devalued"¹³⁴ or "illegitimate"¹³⁵ if their capacity for empathy, their concern for the state of the world is not valued in law school.

So, here the critique of law school and its effect on public interest commitment begins to sound like some feminist critiques of law school: as these students complain about their legal education, they make essentially the same point made by feminist theorists who have argued that law school is insufficient and that legal education needs to reflect the distinctive perspective women bring to the study of law.¹³⁶ These critiques stand

130. Weiss & Melling, *supra* note 90, at 1333.

131. Weiss & Melling, *supra* note 90, at 1347.

132. See *infra* part I.D (discussing how teaching through personal experiences and stories helps students better understand law as it is applied in reality).

133. See *supra* notes 39-45 and accompanying text (describing the public interest motivations of students entering law school).

134. See *supra* text accompanying note 97.

135. See *supra* text accompanying note 98.

136. See Leslie Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 VT. L. REV. 1, 15 (1990) (arguing that a legal system that recognized gender difference is the most logical); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L. J. 39, 49 (1985) (discussing the different moral and psychological voice that women bring to the practice of law); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543, 544 (1986) (comparing and contrasting the feminine alternative to modern liberal jurisprudence).

alone, but I seek to provide an additional reason to listen to them. They give us a more subtle understanding of how law school affects public interest commitment. They stress it is not only a matter of providing context, of presenting the law as political or ideological, or involving the students in that discovery. Although this is important, the voices of women tell us to allow for emotional response to the material.

D. Making Personal Connection: Teaching Law Through Stories and Public Interest Commitment.

As it is so often women who find law school unemotional and dehumanizing,¹³⁷ it is perhaps not surprising that feminist legal scholarship should be a fertile source for addressing this problem. A much discussed contribution of feminist legal scholarship has been the introduction of narrative and storytelling into the teaching of law.¹³⁸ These stories give the study of law an entirely new flavor. No one who has ever read it, will forget Susan Estrich's account of her rape. Prefacing an article setting out her analysis of the criminal law of rape, it begins:

Eleven years ago, a man held an ice pick to my throat and said: "Push over, shut up. Or I'll kill you." I did what he said, but I couldn't stop crying. A hundred years later, I jumped out of my car as he drove away.¹³⁹

This story gives her argument an emotional bite it could not otherwise have had. That is, Estrich could still have made her argument that the law of rape demonstrates sexism in the criminal law,¹⁴⁰ but she would have less of our attention and importantly, have evoked less concern for the experiences of women who have been raped.

It is the weaving of emotion and reason that makes such techniques a power to persuade and to transform understanding about law.¹⁴¹ Describing emotional experiences is one way of communication with the reader.¹⁴² Critical race theorists have also pioneered these methods by advancing powerful cri-

137. See *supra* part III.C (discussing accounts of women's experiences at law school).

138. See, e.g. Van Praagh, *supra* note 127, at 113-14 (stating that themes of "personal experience and voice are found in the emerging discussion of narrative and storytelling"); Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 973 (1992) (noting that feminist scholars' use of narratives has "commanded attention").

139. Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986).

140. *Id.*

141. Van Praagh, *supra* note 127, at 129-135; Abrams, *supra* note 144, at 973-82.

142. Abrams, *supra* note 143, at 982.

tiques of constitutional doctrine through the telling of stories and personal narrative.¹⁴³ For example, race theorist, Charles Lawrence, advances the argument that the Fourteenth Amendment should address unconscious racism.¹⁴⁴ Lawrence illustrates how "a good, liberal, white person" can be guilty of unconscious racism through his childhood memory where his class was read the cartoon *Little Black Sambo* at a progressive New York private school.¹⁴⁵ In a similar fashion, the emotional connection made by Patricia Williams' stories comparing the homeless in the subway and those made homeless by the 1989 San Francisco earthquake challenges students to think of homelessness as "a metaphor for, as well as manifestation of, collective disownership."¹⁴⁶

Such stories and narratives are critical to understanding of arguments about law, and they provide a personal, emotional content to the study of law. It is this latter point that I seek to emphasize here. As so many accounts of law schools tell us, students who came to law school because of a keenly felt sense of injustice need an affirmation of the importance of the ability to understand and care about others.¹⁴⁷ To the praises which others have sung of narrative and story telling in legal education,¹⁴⁸ let me add that it can push back the boundaries we have constructed around legal discourse, in which students with a commitment to public interest work feel confined and emotionally starved.

III. CONCLUSION

My point in examining all of this is to persuade law teachers to approach the transformative power of law school with care. No doubt, it is exhilarating. Many law teachers approach with

143. See e.g., Charles R. Lawrence III, *The Id, the Ego and Equal Protections: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 317 (1989).

144. *Id.*

145. *Id.* at 317-18.

146. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 92 (1991). See also Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L. J. 431, 458-461 (challenging First Amendment doctrines through the use of stories describing racist incident); Mari Matsuda, *Public Response to Hate Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2326-31 (1989) (relating numerous accounts of racist's attacks against different minorities).

147. See generally *supra* notes 143-153 and accompanying text (discussing how the number of students citing social reform works as a motivation for entering law school appears to be diminishing).

148. See *supra* notes 139-144 and accompanying text.

pride the notion that law students come to law school to have their lay person's minds transformed into the minds of lawyers. But, at their most arrogant, law teachers regard students as blank slates on which the teacher writes; their minds of "mush" molded into fine lawyerly minds.¹⁴⁹ Law teachers should know that, though may have much to give their students, the powerful experience of legal education can rob students of a valuable commitment to the public interest. So, rather than thinking of students as empty vessels to fill with new understandings, law teachers should remember the importance of some things that their students already have.

149. Professor Kingsfield famously told the Harvard first year class, "You come in here with a skull full of mush, and you leave thinking like a lawyer." Osborne, *supra* note 84, at 17-21.

