

Actually Begin to Satisfy ABA Standards 211(a) and 212(a): Eliminate Race and Sex Bias in Legal Education

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The American Bar Association Standards for Approval of Law Schools mandate non-discrimination and equality of opportunity,¹ requiring law schools to “demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities.”² My radical proposal is to actually satisfy these standards.

Minority enrollment in J.D. programs has been steadily increasing to 21.6% in academic year 2006-07. Interestingly, the number of women enrolled in J.D. programs has dropped to 46.9% from a high of 50.4% in academic year 1992-93.³ Since the ABA does not provide statistics about the number of women of color (or, alternatively, the number of white women) enrolled in J.D. programs, we can only assume that the combined total of people of color and white women now constitutes a majority of law students. Nonetheless, there is no shortage of studies documenting that this “new majority,” while paying the same tuition as white men, are receiving a lesser educational experience.⁴ While this bias is pervasive throughout the legal education experience, I will only address the classroom environment. My specific proposals are actually quite modest, but are directed at concrete actions that are economically feasible and can be implemented immediately. Obviously, these proposals are only the beginning of a long-term project, but

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¹ See ABA Standards for Approval of Law Schools 211(a) (2007-2008), <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%202.pdf> (“A law school shall foster and maintain equality of opportunity in legal education . . . without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.”).

² See *id.* 212(a).

³ ABA SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, LEGAL EDUCATION STATISTICS, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER (2007), <http://www.abanet.org/legaled/statistics/charts/stats%20-%2006.pdf>.

⁴ Many articles address and analyze these studies, including several that I have written. See generally Morrison Torrey, *Yet Another Gender Study? A Critique of the Harvard Study and a Proposal for Change*, 13 WM. & MARY J. WOMEN & L. 795 (2007) [hereinafter *Yet Another Gender Study?*]; Morrison Torrey, *You Call That Education?*, 19 WIS. WOMEN'S L.J. 93 (2004); Morrison Torrey, Jennifer Ries, & Elaine Spiliopoulos, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998).

if enacted, they will demonstrate a commitment to achieving ABA Standards 211(a) and 212(a).

Make classrooms welcoming. Every large, first-year classroom that I have ever been in has portraits of old, white men hanging on the walls. What exactly is the message being conveyed beyond the fact that “success” is for old, white men? What did the men in the portraits actually accomplish? Did they use the law to make the world a better place? Presumably, these are illustrious alumni, faculty of note, or some other category of distinction. But the impact is immediate upon students who do not look like the white men surrounding them. As a result of historical exclusion and prejudice, there may not be a sufficient number of minorities (either male or female) to replace or supplement the current cadre. The solution is not to simply add a token portrait or two among the existing multitude; that will simply reinforce the message of inferiority and inability to achieve.

Instead, why not create inspirational classrooms? For example, The Abolitionist Room, with portraits of Frederick Douglass, Harriet Tubman, Angelina and Sarah Grimke, Harriet Beecher Stowe, and others. Or, the Suffrage Room, with portraits of Sojourner Truth, Susan B. Anthony, Ida B. Wells, Elizabeth Cady Stanton, Jane Addams and others. There could be a Civil Rights Movement Room and a Women’s Movement Room, too. This is *not* disrespectful to the old, white men on the walls; rather, it is a visible statement that *all* students are welcome and that people of color and white women have achieved great things through legal means.

Assign minority and white women faculty to teach in the first year. Not only would law schools be providing invaluable role models, but they would also be setting the example of equitable treatment. Many students of color believe that the lower numbers of professors of color deprive them of role models in the legal profession. Multiple studies have revealed that *all* students, including male students of color, feel encouraged by female faculty, who, incidentally, also have greater student participation rates in their classes.⁵ And, not surprisingly, minority students report feeling more comfortable speaking in a class taught by a minority professor.⁶ As a result, it is essential that the all-important first-year experience includes minority and white female professors teaching in the classroom as well as being displayed on the classroom walls. In fact, it will probably be better for *all* students in light of the above findings.

Require a first-year course that is centered on issues of subordination and privilege. *All* students, not just a self-selected few, must be exposed to critical exploration of equality and the role the law plays in challenging or perpetuating discrimination. Courses such as “Race, Racism

⁵ See *Yet Another Gender Study?*, *supra* note 4, at 811-13 (citing studies); *What Every First-Year Female Law Student Should Know*, *supra* note 4, at 280 (same).

⁶ See *What Every First-Year Female Law Student Should Know*, *supra* note 4, at 276-77, 280 (citing studies).

and U.S. Law” or “Feminist Jurisprudence” or “Sexuality and the Law” should be part of the mandatory first-year curriculum. These classes will provide the tools for critical analysis, rather than abject acceptance of doctrine, essential for good lawyers.

Additionally, *all* teachers should be encouraged to address race and gender issues in *all* of their classes. Faculty should search for course materials that provide for adequate and appropriate coverage of these issues and administrators should identify resources and provide professional development workshops to address these issues.

Require a pedagogy that does not have a demonstrated bias. The Socratic Method has never been validated as an effective pedagogy, but it has been demonstrated time and again to have a negative impact upon minorities and white women. Women and minority men report a loss of confidence in classes utilizing the Socratic Method, and a loss in confidence translates into lower performance. The current incarnation of the Socratic Method in legal education is based on intimidation and passivity. Unfortunately, fear and anxiety inhibit, rather than stimulate, learning. There have been no studies to show that white men cannot learn equally well with other methods, such as problem-solving and collaborative work. In fact, there is overwhelming evidence that there are much better ways to teach, and to learn, than the Socratic Method.

Most importantly, faculty should be required to provide interim feedback. This is essential for students not comfortable with the pedagogy, language, and culture of the law. Interim feedback is often noted as the single most important aspect of adult learning; it is inexcusable for legal education to neglect it out of self-interest and, well, laziness.

Eliminate letter grades, relying upon a pass/fail system. There simply is no valid educational reason to assign grades other than to assess competency. A pass/fail (possibly supplemented with a “high pass”) satisfies this goal. In a world in which first-year grades control law review selection and other benefits, and statistically are nearly impossible to overcome, minorities and white women, who tend to get lower first-year grades, are adversely impacted. All law review participation would be based upon writing competitions in which the skills actually relating to performance on a journal are evaluated, rather than simple reliance upon first-year grades. This modification would remedy the problem of students who may take longer to adapt to legal education, typically minorities and white women. It would also correct the persistent grade bias against minority groups.

Encourage faculty to utilize take-home exams. Professors should be urged to give open book, take-home exams and to allow students to type their exams. Giving exams under these conditions seems to be least discrimi-

natory, and there is no valid pedagogical reason for insisting on another format.⁷

The school's commitment to non-discrimination must be unequivocal. Schools can physically demonstrate their commitment by displaying large posters in all classrooms with the non-discrimination policy and how to register complaints. The policy should be reinforced at every opportunity, such as during orientation week and at other school events. The policy should be expressly contained in every employment contract.

In summary, all of these recommendations will enhance the educational environment for *all* students, not just minorities and white women. None of them are expensive to implement. None of them will result in harm to white men; in fact, white men will probably benefit from the suggested educational reforms, too. We know, both empirically and anecdotally, that the current approach to legal education harms not only women, men of color, lesbian, gay, bisexual, transgendered, queer, and disabled students, but also large numbers of white, heterosexual men. Substantial numbers of white men also report loss of confidence and self-esteem as a result of their legal education. Even though law school students matriculate with a psychological profile similar to the general public, between twenty and forty percent graduate with some psychological dysfunction—depression, substance abuse, and/or various stress-related disorders. Legal education today actually makes students sick, and does not even prepare them to practice law.⁸ My radical proposal, taking concrete steps to satisfy ABA Standards 211(a) and 212(a), will make legal education in the 21st Century better for everyone.

⁷ See discussion in *What Every First-Year Female Student Should Know*, *supra* note 4, at 288, 305.

⁸ See studies cited in *Yet Another Gender Study?*, *supra* note 4, at 804-05.