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## The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education

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[Abstract]

The demographics of law schools are changing and women make up the majority of law students. Yet, the demographics of many law faculties do not reflect these changing demographics with more men occupying faculty seats. In legal education, women predominately occupy skills positions, including legal writing, clinic, academic success, bar preparation, or library. According to a 2010 Association of American Law Schools survey, the percentage of female lecturers and instructors is so high that those positions are stereotypically female.

The term coined for positions typically held by women is “pink ghetto.” According to the Department of Labor, pink-collar-worker describes jobs and career areas historically considered “women’s work,” and included on the list is teaching. However, in legal education, tenured and higher-ranked positions are held primarily by men, while women often enter legal education through non-tenured and non-faculty skills-based teaching pipelines. In a number of these positions, women experience challenges like poor pay, heavy workloads, and lower status such as by contract, nontenure, or at will.

While many may view this as a challenge, looking at these positions solely as a “pink ghetto” diminishes the many contributions women have made to legal education through the skills faculty pipelines. Conversely, we miss the opportunity to examine how legal education has changed and how women have accepted the challenge of being on the front line of educating this new generation of learners while enthusiastically adopting the American Bar Association’s new standards for assessment and student learning. There is an opportunity for women to excel in these positions if we provide them with allies who champion for equal status and provide the requisite support.

This article focuses on the changing gender demographics of legal education, legal education pipelines, and the role and status of women in higher education with an emphasis on legal education. The final section applies

feminist pedagogy to address challenges, opportunities, and aspirations for women in legal education.

### I. INTRODUCTION: PINK-COLLAR WORK & THE "PINK GHETTO"

Pink-collar describes work traditionally performed by women. The term distinguishes female-oriented jobs from others like blue or white-collar work.<sup>1</sup> Teaching, along with domestic and clerical work, has long been considered pink-collar work.<sup>2</sup> The acceptance of so-called "women's work" lead women to experience occupational segregation in jobs where more than half of the employees were female.<sup>3</sup> Even as women entered professions formerly dominated by men, like clerical work, women earned half of what men earned.<sup>4</sup>

So-called pink-collar work and its effects persist today. A 2018 Harvard Business Review study found that women are more likely than men to be asked to volunteer, and ultimately volunteer, for "non-promotable" tasks.<sup>5</sup> These tasks include "office housework," like planning an office party or stepping in for a coworker.<sup>6</sup> In academia, women most often engage in non-promotable, service-related activities, while men engage in promotable tasks like research and scholarship.<sup>7</sup> While volunteering for such tasks may seem harmless, over time taking on such tasks can stifle productivity and derail a woman's career.<sup>8</sup>

While pink-collar work characterizes a type of work, the "pink ghetto" describes the socioeconomic status of people who perform pink-collar jobs.<sup>9</sup> In the legal academy, the "pink ghetto" is overwhelmingly occupied by women so much so that ". . .the legal academy has an explicit and de jure two-track system for its lawyers: a high-status, high-pay, professional track made up overwhelmingly of men, and a low-status, low-pay 'instructor' track make up overwhelmingly of women."<sup>10</sup> In the academic "pink ghetto,"

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1. LOUISE KAPP HOWE, *PINK COLLAR WORKERS: INSIDE THE WORLD OF WOMEN'S WORK* 21 (1977).

2. Judith B. Bremner, *Black Pink Collar Workers: Arduous Journey from Field and Kitchen to Office*, 19 J. SOC. & SOC. WELFARE 7, 12 (1992).

3. HOWE, *supra* note 1, at 16–17.

4. *Id.*

5. Linda Babcock, Maria P. Recalde & Lise Vesterlund, *Why Women Volunteer for Tasks That Don't Lead to Promotions*, HARVARD BUS. REV. (July 16, 2018), <https://hbr.org/2018/07/why-women-volunteer-for-tasks-that-dont-lead-to-promotions>.

6. *Id.*

7. *Id.*

8. *Id.*

9. Corey Rayburn, *Why Are You Taking Gender and the Law?: Deconstructing the Norms that Keep Men Out of the Law School's "Pink Ghetto,"* 14 HASTINGS WOMEN'S L.J. 71, 77 (2003).

10. Kathryn M. Stanchi & Jan M. Levine, *Gender and Legal Writing: Law School's Dirty Little Secrets*, 16 BERKELEY WOMEN'S L. J. 3, 4 (2001).

there is a certain domestication of women as women are segregated based on the subject matter they teach and the fact that women often take on domestic roles.<sup>11</sup> In law schools, women in "pink ghettos" predominately occupy skills positions like legal writing, clinic, academic success, bar preparation, and the law library. In these positions, women are often physically segregated from their tenure-track colleagues within the law school building.<sup>12</sup>

In the law school "pink ghetto," women have lower status and pay, higher workloads, and less job security than their male counterparts. Even within female-dominated subject-matter areas like legal writing, men are paid more than women.<sup>13</sup> Law schools have bolstered their overall faculty diversity by hiring women for non-tenure track clinical and legal writing faculty positions.<sup>14</sup> Yet, these women suffer "occupational segregation" characterized by lower pay, lack of job security, and limits on the subject areas that they are permitted to teach.<sup>15</sup> They also receive limited financial support for scholarship and professional development opportunities.<sup>16</sup> These women are second-class citizens who are often excluded from faculty governance or the full protection of academic freedom.<sup>17</sup>

While some argue that women relegated to the "pink ghetto" are the most suited to help law schools combat current legal education challenges like the demand for practice-ready graduates and assessment-driven curriculum,<sup>18</sup> it is unlikely that this argument will elevate women from the "pink ghetto," as law schools find justification for the existence of a second-class citizenship in American Bar Association ("ABA") Standard 405(c).<sup>19</sup> This is also unlikely because, compared to their mostly male counterparts, women in the "pink ghetto" (especially legal writing instructors) are considered less qualified and not intellectual.<sup>20</sup> Because the discrimination against women is so overt, it is likely that "Perceptive law students learn both the explicit and the implicit lessons about women's value and roles by observing how law schools treat their women faculty."<sup>21</sup>

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11. Rayburn, *supra* note 9, at 78.

12. David T. Ritchie, *Who is on the Outside Looking In, and What do They See?: Metaphors of Exclusion in Legal Education*, 58 *MERCER L. REV.* 991, 1010 (2007).

13. Jo Anne Durako, *Second-Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 *J. LEGAL EDUC.* 562, 562–63 (2000).

14. *Id.* at 564.

15. *Id.* at 565.

16. *Id.* at 583.

17. Ritchie, *supra* note 12, at 1009–10.

18. Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in its Wake*, 10 *SEATTLE J. FOR SOC. JUST.* 49, 71.

19. Stanchi & Levine, *supra* note 10, at 15.

20. Dauphinais, *supra* note 18, at 86–100.

21. Durako, *supra* note 13, at 585.

This article will first look at changing gender demographics of legal education. Next, this paper explores traditional legal education pipelines and alternative pipelines women use to enter legal education. This paper will then look at the role and status of women in higher education with an emphasis on legal education. Finally, this paper will address the challenges, opportunities, and aspirations of moving forward using a feminist pedagogy approach.

## II. STATUS OF WOMEN IN LEGAL EDUCATION

### A. *History of Women in Legal Education*

After being rejected by Columbia University in 1868, Lemma Barkaloo became the first female law student when she enrolled at the Law Department of Washington University in St. Louis in 1869.<sup>22</sup> However, Barkaloo resigned after one year of study due to harassment from her male classmates.<sup>23</sup> In 1870, Ada Kepley became the first woman to earn a law degree when she graduated from what is now Northwestern University.<sup>24</sup>

Although women were still broadly prohibited from attending law school, an African American woman, Lutie A. Lytle, became the first female law professor in 1897.<sup>25</sup> One year later, Ellen Spencer Mussey became the first female law school dean when she and Emma Gillett founded Washington College of Law.<sup>26</sup> Known today as New England School of Law, Portia Law School became the first and only law school for women in 1908.<sup>27</sup> Ten years later, the ABA started granting membership to women.<sup>28</sup> In 1919, Barbara Armstrong became the first tenure-track female law professor at the University of California at Berkeley.<sup>29</sup>

The 20<sup>th</sup> Century ushered in an era of more acceptance of women in law school. In 1928, Columbia Law School began accepting women.<sup>30</sup> Harvard Law School followed suit in 1950.<sup>31</sup> In 1951 at Seton Hall University School of Law, founding dean Miriam Theresa Rooney became the first female dean

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22. Angela Nicole Johnson, *A Timeline of Women's History in the Legal Profession*, at 2 (June 20, 2011), <https://womenaslawyers.files.wordpress.com/2011/03/a-timeline-of-womens-history-in-the-legal-profession-last-updated-6-20-11.pdf>.

23. *Id.*

24. Professor Cunnea, *A Timeline of Women's Legal History in the United States*, at 4 (1998) <http://wlh.law.stanford.edu/wp-content/uploads/2011/01/cunnea-timeline.pdf>.

25. *Id.* at 7.

26. Herma Hill Kay, *Women Law School Deans: A Different Breed, Or Just One of the Boys?*,

14 *YALE J.L. & FEMINISM* 219, 221 (2002).

27. Johnson, *supra* note 22, at 8.

28. *Id.* at 9.

29. Cunnea, *supra* note 24, at 7.

30. Johnson, *supra* note 22, at 10.

31. *Id.* at 11.

of an ABA accredited law school.<sup>32</sup> With the increase of women in law schools, the first *Women and the Law* courses were taught at NYU, Yale, and Georgetown in 1969 and 1970.<sup>33</sup> In 1970, Ruth Bader Ginsburg founded the *Women's Rights Law Reporter*, a journal dedicated to legal scholarship regarding women's rights.<sup>34</sup> More than 100 years after the first woman matriculated at a law school, Title IX was enacted, prohibiting gender discrimination in student admissions and faculty hiring.<sup>35</sup>

### B. Demographics: Women in Legal Education

Gender demographics of law school faculty reflect the history of exclusion of women in legal education as full-time male faculty significantly outnumber female faculty. Per the 2018 ABA Standard 509 disclosures, 61.22% of law faculty members are male, while 38.78% are female.<sup>36</sup> Almost half of female faculty members are employed part-time<sup>37</sup> and female faculty members decreased by 355 from 2017 to 2018.<sup>38</sup>

Gender demographics of female law students starkly contrast those of female faculty. In 1985, 40% of law students were women.<sup>39</sup> Female law students first outnumbered male law students in 2016.<sup>40</sup> In 2018, 52.44% of law students were female and 47.56% were male.<sup>41</sup> While overall female law student enrollment is trending upward, female law students are overwhelmingly enrolled at lower-ranked law schools,<sup>42</sup> which may impact employment opportunities and earning potential.<sup>43</sup>

Despite the history of excluding women from legal education and low female faculty representation, female law school deanships have significantly increased in the last twenty years. Because 30% of ABA accredited law school dean appointees were female, 2015 was coined the "year of the

32. Hill Kay, *supra* note 26, at 222.

33. Johnson, *supra* note 22, at 11.

34. *Id.*

35. *Id.* at 12.

36. Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, *509 Required Disclosures*, A.B.A., <http://www.abarequireddisclosures.org/Disclosure509.aspx> (last accessed Jan. 1, 2019) [hereinafter "*509 Required Disclosures*"].

37. *Id.*

38. *Id.* (509 Required Disclosures for year 2017).

39. Johnson, *supra* note 22, at 13.

40. Staci Zaretsky, *There are Now More Women In Law School Than Ever Before*, ABOVE THE LAW (May 7, 2018) <https://abovethelaw.com/2018/03/there-are-now-more-women-in-law-school-than-ever-before/>.

41. *509 Required Disclosures*, *supra* note 36 (2018 JD Enrollment and Ethnicity).

42. *Law School Rankings by Female Enrollment*, ENJURIS, <https://www.enjuris.com/students/law-school-female-enrollment-2017.html> (last accessed Jan. 1, 2019).

43. Elizabeth Olson, *Women Make Up Majority of U.S. Law Students for First Time*, N.Y. TIMES (Dec. 16, 2018), <https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>.

female dean."<sup>44</sup> Currently, 30% of deans at ABA accredited schools are female.<sup>45</sup> This number represents an increase of 50% since 2006, and 75% since 1997.<sup>46</sup> In early 2019, the number of minority female deans or interim deans rose to 19, representing 10% of ABA accredited law schools.<sup>47</sup>

### C. Gender Bias, Micromessaging, and Intersectionality

Gender bias, micromessaging, and intersectionality are important concepts relating to challenges and opportunities for women in legal education. This section provides a brief introduction of these important concepts.

Gender bias is explicit and implicit in law schools and the legal profession. To distinguish the two, "Explicit bias is a preference deliberately generated and consciously experienced as one's own; implicit bias is an association or preference that is not consciously generated and is experienced without awareness."<sup>48</sup> The 2018 ABA study on racial and gender bias in the legal profession found that gender bias was pervasive at all stages of employment—hiring, performance evaluations, mentoring, quality of assignments, access to networking opportunities, fair pay, and promotion.<sup>49</sup> Further, gender bias resulted in sexual harassment for 25% of female respondents, many of whom also lost career opportunities as a result of rejecting unwanted sexual advances.<sup>50</sup>

Women constantly receive messages that they do not belong in the legal profession.<sup>51</sup> Micromessages are small messages that reinforce implicit bias and group dynamics.<sup>52</sup> Predominantly male paintings and photographs displayed throughout a law school are examples of nonverbal micromessages. Addressing a female faculty member by her first name, while male faculty members are referred to using titles like "professor," is an example of a verbal micromessage. These messages are microaggressions that communicate microinequities which influence a woman's interactions with colleagues,

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44. Andrew Huang, *Year of the Female Dean*, NAT'L JURIST (July 7, 2015), <http://www.nationaljurist.com/prelaw/year-female-dean>.

45. Tracy Thomas, *New Women Law School Deans*, GENDER & L. PROF BLOG (June 8, 2017), [https://lawprofessors.typepad.com/gender\\_law/2017/06/new-women-law-school-deans.html](https://lawprofessors.typepad.com/gender_law/2017/06/new-women-law-school-deans.html).

46. Cynthia L. Cooper, *Women Ascend in Deanships as Law Schools Undergo Dramatic Change*, PERSPECTIVES, 2016, at 8.

47. Karen Sloan, *More Minority Women Ascend to Law Dean Jobs*, NAT'L L. J. (Jan. 10, 2019), <https://www.law.com/nationallawjournal/2019/01/10/more-minority-women-ascend-to-law-dean-jobs/>.

48. Judge Bernice B. Donald & Sarah E. Redfield, *Framing the Discussion*, in ENHANCING JUSTICE: REDUCING BIAS 14 (Sarah E. Redfield ed., 2017).

49. JOAN C. WILLIAMS ET AL., YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION 8 (2018).

50. *Id.* at 9–10.

51. *Id.* at 7.

52. Donald & Redfield, *supra* note 48, at 20.

student engagement, professional credibility, and overall outcomes.<sup>53</sup> Individual messages have a cumulative negative and positive effect on recipients and observers.<sup>54</sup>

Finally, we would be remiss if we did not address intersectionality, the experiences that occur when race and gender intersect. Following the works of early Black feminists, which addressed the plight of Black women,<sup>55</sup> Law Professor Kimberle Crenshaw formally coined the term "intersectionality" in 1989 as a result of her findings that existing feminist and antiracist frameworks, which treated race and gender as mutually exclusive, failed to accurately address the experiences of Black women.<sup>56</sup> Feminist and antiracist frameworks erase "Black women in the conceptualization, identification and remediation of race and sex discrimination by limiting inquiry to the experiences of otherwise-privileged members of the group."<sup>57</sup>

Simply adding Black women to an established framework will not remedy the discrimination they experience "[b]ecause the intersectional experience is greater than the sum of racism and sexism. . . [and] any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated."<sup>58</sup> For example, in the ABA study, Black women reported experiencing higher levels of bias at all stages of the employment process and higher overall bias.<sup>59</sup> Looking at the ways in which these Black women experience bias through a feminist or antiracist lens fails to fully account for their experiences, limiting the effectiveness of strategies designed to interrupt the biases Black women experience.

A full exploration of the unique experiences of Black women is beyond the scope of this paper. However, we acknowledge that, because of intersectionality, the experiences of Black women in legal education are different than their White counterparts as race presents an additional dynamic and barrier.

### III. HIRING PIPELINES IN LEGAL EDUCATION

This section will explore the various pipelines used by individuals to enter law teaching. Some of the pipelines explored will be traditional, like the Annual Association of Law Schools Faculty Appointments Register and

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53. *Id.*

54. *Id.*

55. See generally THE BLACK WOMAN: AN ANTHOLOGY (Toni Cade Bambara ed., 1970); Frances Beal, *Double Jeopardy: To Be Black and Female*, in THE BLACK WOMAN: AN ANTHOLOGY (Toni Cade Bambara ed., 1970).

56. Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139–40 (1989).

57. *Id.* at 140.

58. *Id.*

59. WILLIAMS ET AL., *supra* note 49, at 9.



Faculty Recruitment Conference, while other pipelines discussed are non-traditional.

Developing designated pipelines for women in legal education is essential to ensuring law faculties are diverse and representative of the changing student body in American law schools. In general, hiring pipelines refers to the chronological order in which candidates are attracted and hired.<sup>60</sup> The most effective pipelines involve proactive recruiting,<sup>61</sup> rather than passive hiring. Unlike the commonly used hiring process, proactive recruiting is the process of identifying potential candidates long before the position becomes open.<sup>62</sup> This involves identifying and engaging individuals with the specific skill sets needed for the position, which often results in a proactive pipeline filled with people who fit the position and who can fill the position quickly.<sup>63</sup>

Race and gender certainly remain hot-button topics when discussing diversity and the direct implications on recruiting, hiring, and retaining diverse law faculty. According to the American Association of Law Schools, diversity is a major responsibility of law schools and specifically law faculty because diversity strengthens institutions and their educational mission.<sup>64</sup> This extremely important focus on diversity also extends beyond faculty to include staff and students. The ABA also addresses diversity through a series of standards required for law schools to retain ABA accreditation.<sup>65</sup> ABA Standard 206 Diversity and Inclusion provides:

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity.<sup>66</sup>

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60. Simran Singh, *The ABC's of Recruitment: Part 1*, RECRUTEER (Nov. 7, 2018), <https://blog.recruitee.com/the-abcs-of-recruitment-part-1/>.

61. Shaun Ricci, *Why You Should Be Building Proactive Recruiting Pipelines*, IDEAL (Apr. 3, 2018), <https://ideal.com/proactive-recruiting-pipeline/>.

62. *Id.*

63. *Id.*

64. *Recruitment and Retention of Minority Law Faculty Members*, ASS'N AM. L. SCHS. (July 12, 2017), <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members/> [hereinafter "AALS HANDBOOK"].

65. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017-2018, at 12 (2017) [hereinafter "ABA APPROVAL STANDARDS 2017-2018"].

66. *Id.*

Like race, gender has become a line of “gender segregation” between the conventional tenure tracks and the “lesser” forms of faculty employment.<sup>67</sup> The ABA standards directly identify gender, race, and ethnicity as necessary elements of providing an inclusive environment.<sup>68</sup> Legal education has experienced the impact of pervasive discrimination in its recruitment and hiring practices. In 1990, Derick Bell, the first Black professor at Harvard Law, requested a leave of absence until the law school appointed a tenured Black woman to the faculty.<sup>69</sup> At that time, Harvard had 61 tenured faculty members, three were Black (less than 5%), only five were women (12%) and none were women of color.<sup>70</sup> According to Professor Bell, “I cannot continue to urge students to take risks for what they believe if I do not practice my own precepts.”<sup>71</sup> It is important to note that Professor Bell himself was hired in 1969 after students expressed discontent with Harvard Law not having anyone of color on the faculty.<sup>72</sup>

#### A. Traditional Law Teaching Pipeline

The market for law faculty positions is “exceedingly competitive”<sup>73</sup> and a key player in the hiring process of faculty at law schools around the country is the Association of American Law Schools (“AALS”). The AALS has participated in the initial hiring process for the vast majority of new law teachers.<sup>74</sup> The most prominent and traditional pipeline for individuals entering the legal academy is the AALS Faculty Appointments Register (“FAR”) and the annual Faculty Recruitment Conference (“FRC”).

The FRC is held in October of each year in Washington, D.C. or occasionally in Chicago.<sup>75</sup> The FRC, commonly referred to as the “meat

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67. Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 346 (2000).

68. See *ABA APPROVAL STANDARDS 2017-2018*, *supra* note 65, at 12.

69. Fox Butterfield, *Harvard Law Professor Quits Until Black Woman Is Named*, N.Y. TIMES (Apr. 24, 1990), <https://www.nytimes.com/1990/04/24/us/harvard-law-professor-quits-until-black-woman-is-named.html>.

70. Two years after Bell began his unpaid leave, Harvard announced that he would have to resign his position, citing a university rule barring any tenured faculty member from remaining on leave for more than two years. See *Harvard Law Notifies Bell of Dismissal for Absence*, N.Y. TIMES (July 1, 1992) <https://www.nytimes.com/1992/07/01/news/harvard-law-notifies-bell-of-dismissal-for-absense.html>.

71. Butterfield, *supra* note 69.

72. *Id.*

73. DEBRA R. COHEN, MATCHMAKER, MATCHMAKER, MAKE ME A MATCH: AN INSIDER’S GUIDE TO THE FACULTY HIRING PROCESS (2006).

74. YALE LAW SCHOOL CAREER DEVELOPMENT OFFICE, ENTERING THE LAW TEACHING MARKET (2018), [https://law.yale.edu/system/files/area/departments/cdo/document/cdo\\_law\\_teaching\\_public.pdf](https://law.yale.edu/system/files/area/departments/cdo/document/cdo_law_teaching_public.pdf).

75. *Id.*

market",<sup>76</sup> provides an opportunity for law schools and individuals interested in law teaching, to meet over a three-day period.<sup>77</sup> The FAR process and the actual FRC has been described as being akin to modern day speed dating, with candidates rotating through each interview answering the same questions from each school's interview committee.<sup>78</sup> According to AALS the, "AALS Faculty Recruitment Services acts as a matchmaker between law faculty candidates and schools with open positions."<sup>79</sup>

Women using the AALS process, which is normally where faculty hiring begins, from 1992-93 through 1999-2000, fluctuated between 33 to 37 percent.<sup>80</sup> These figures suggest that fewer women are applying for teaching jobs, at a disproportionately smaller rate than expected based on "their presence in the population from which applicants for law faculty jobs are generally drawn."<sup>81</sup> In part, post-hire status may be a contributing factor to the disproportionately smaller number of women applying for law teaching jobs. On average, women in legal education are being hired at lower academic ranks than men.<sup>82</sup>

#### B. *Non-Traditional Law Teaching Pipelines*

While the AALS faculty recruitment process is the predominant method for hiring law teachers, there are certain "skills" positions in the legal academy that are not frequently hired through the AALS process. These skills positions include clinical, legal writing, academic support and bar preparation, and law librarian positions. According to Richard Neumann, "Clinical and legal writing teaching are the only fields in which significant numbers of teachers are hired outside of the conventional tenure track."<sup>83</sup> This section will explore the non-traditional hiring process for skills positions and the impact on women in legal education.

According to Melissa Hart, "[s]kills teachers tend to be paid less, have less job security, and have lower status within their institutions. Given that women are over-represented in skills teaching positions and under-represented among tenured and tenure-track faculty, this two-track system significantly exacerbates gender inequality in law schools."<sup>84</sup> These skills positions are plagued with salary inequity, limited opportunities for promotion and professional development, and other distinguishable differences from

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76. *Id.*; Beverly McQueary Smith, *Law Teaching: Is It the Career for You*, NBA Nat'l B.A. Mag. 34, September/October, 1996

77. *See id.*; *see also* AALS HANDBOOK, *supra* note 64.

78. COHEN, *supra* note 73.

79. AALS HANDBOOK, *supra* note 64.

80. Neumann, *supra* note 67, at 316.

81. *Id.* at 342.

82. *Id.* at 346.

83. *Id.* at 327.

84. Melissa Hart, *The More Things Change . . . Exploring Solutions to Persisting Discrimination in Legal Academic*, 31 COLUM. J. GENDER & L. 1, 2 (2015).

“traditional podium” faculty. In response, the ABA updated the standards in recent years to address, in part, compensation and job security issues and concerns. ABA Standard 405 on professional development provides:

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

(d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 303(a)(2), and (2) safeguard academic freedom.

### 1. *Clinical Positions*

Clinical instructors have made some noticeable gains in their professional status in legal education. However, “[t]hrough clinical faculty have largely moved out of the proverbial basement, they remain a distinct subgroup within most law faculties.”<sup>85</sup> Clinical instructors are also “labeled something other than law professors (‘clinicians’) because of their teaching methods and goals, and faculty that teach law clinic and externship courses also differ as a group by gender, race, employment status, and salary from ‘podium’ faculty teaching doctrinal courses.”<sup>86</sup> In 2013, 62% of full-time clinical instructors, were women.<sup>87</sup>

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85. Robert Kuehn, *Clinical Faculty — Who are you? Who, Who, Who, Who?*, BEST PRACTICES FOR LEGAL EDUC. BLOG (Jan. 3, 2018), <https://bestpracticeslegaled.albanylawblogs.org/2018/01/03/clinical-faculty-who-are-you-who-who-who-who/>.

86. *Id.*

87. See Am. Bar Ass’n, Section of Legal Educ. & Admissions to the Bar, *Statistics Archives: Longitudinal Charts*, A.B.A., [https://www.americanbar.org/groups/legal\\_education/resources/statistics/statistics-archives/](https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/) (last accessed Apr. 17, 2019) [hereinafter “*Law School Faculty*”] (scroll down to select “Law School Faculty & Staff by Ethnicity and Gender”).

To address the job security issue impacting clinical instructors, the ABA developed standard 405 to establish a requirement for job security for clinical instructors.<sup>88</sup> However, to satisfy the job security requirement of standard 405, many law schools created a separate system of clinical tenure or a system of renewable long-term contracts.<sup>89</sup> The difference in job security between conventional tenure and the separate clinical tenure system is substantial. In addition, clinical instructors on long-term contracts face additional barriers, including job security parallel to that of conventional tenure track positions.<sup>90</sup> Although considered faculty, at many law schools clinical instructors receive lower pay than their tenured counterparts.<sup>91</sup> In addition, they do not fully engage in the governance process, including the ability to vote on important matters like hiring (outside of the clinic) and serving on certain faculty committees.<sup>92</sup>

## 2. *Legal Writing Positions*

Legal writing has been included in the category of a "pink ghetto" by the ABA Commission on Women in the Profession.<sup>93</sup> In 2013, 70% of legal writing instructors were female.<sup>94</sup> In addition, male legal writing instructors moved into tenure-track positions more quickly.<sup>95</sup>

According to Richard H. Chused, "[t]he data also suggest, however, that some schools may be "tracking" women qualified for a regular teaching job into legal writing positions."<sup>96</sup> As a result, a hierarchical system in the legal academy became even more pronounced.<sup>97</sup> This emerging hierarchical system was divided by three levels, with tenure-track faculty at the top, followed by clinical faculty, and finally, the legal writing instructors.<sup>98</sup> Like clinical positions, law schools have developed separate systems of job security for

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88. See AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018-2019, at 29-30 (2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf) [hereinafter "APPROVAL OF LAW SCHOOLS 2018-2019"].

89. See Neumann, *supra* note 67, at 327.

90. See *id.*

91. See *id.* at 328.

92. See *id.*

93. AM. BAR ASS'N, COMM. ON WOMEN IN THE PROFESSION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION 32-33 (1996).

94. *Law School Faculty*, *supra* note 87.

95. Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1, 3 (2000).

96. Richard Chused, *Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 553 (1988).

97. Ann McGinley, *Employment Law Consideration for Law Schools Hiring Legal Writing Professors*, 66 J. LEGAL EDUC. 585, 586 (2017).

98. See *id.*

legal writing instructors to address the job security standard. A separate system that is unequal and has only led to a disproportionate number of women in non-tenure earning positions.

### 3. *Academic Support and Bar Preparation Positions*

Declines in both Law School Admission Test scores, bar passage rates and other challenges associated with attrition and student learning, led to the ABA updating the standards requiring law schools provide a form of academic support. The standards requires that law schools offer students "a reasonable opportunity" to complete the program of legal education, and the ABA identifies academic support as a vehicle to ensure the goal is met.<sup>99</sup> However, the emergence of academic support and bar preparation instructors has led to an additional sub-category of law teachers.

Currently, the majority of academic support and bar preparation instructors and professionals in law schools are women. This sub-category of law teachers is quantified in the "other skills" category of the annual ABA questionnaire.<sup>100</sup> To further underscore the problem, noticeably missing from ABA Standard 405 is job security for academic support and bar preparation professionals.<sup>101</sup> Although academic support and bar preparation programs are growing, the ABA has not extended the same job-security requirements provided to clinical and legal writing instructions.<sup>102</sup>

### 4. *Law Librarians*

Library work has long been classified as pink-collar work.<sup>103</sup> Dating as far back as the turn of the twentieth century, the overwhelming majority of librarians were women. In 1920, 88% of librarians were women, further evidencing the feminization of the profession.<sup>104</sup> In 2011, almost 100 years later, the number of women serving as librarians changed only slightly to 83%.<sup>105</sup> Although initially classified as pink-collar work, there has been a notable increase in the number of men entering the female-dominated

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99. AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018-2019, at 20 (2018), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf)

100. *Law School Faculty*, *supra* note 87.

101. *See* APPROVAL OF LAW SCHOOLS 2018-2019, *supra* note 88.

102. *See id.*

103. *See* Meredith Broadway & Elisabeth Shook, *The Pink Collar Library: Technology and the Gender Wage Gap*, LADY SCI. (Dec. 13, 2018), <https://www.lady-science.com/blog/the-pink-collar-library-technology-and-the-gender-wage-gap>.

104. Janice Monk, *Women's Worlds at the American Geographical Society*, 93 GEOGRAPHICAL REV. 237, 241 (2003).

105. Andrew A. Beveridge, Susan Weber, & Sydney Beveridge, *Librarians in the United States From 1880-2009*, OURBLOG (June 20, 2011), <https://blog.oup.com/2011/06/librarian-census/>.

"librarianship."<sup>106</sup> With the expanded role of technology in libraries, along came an increase in the number of male librarians.<sup>107</sup> The increase in male librarians also called into question gender and equity issues directly impacting the traditionally female-dominated profession.<sup>108</sup> According to Meredith Broadway and Elisabeth Shook, "[m]en, at disproportionate rates, take both limited management roles and higher pay in a profession ubiquitously thought to be womanly."<sup>109</sup>

The status of librarians has changed significantly over the last 50 years. In 2013, there were over 1,600 full-time professional librarians in ABA law schools.<sup>110</sup> According to the 2013 Academic Law Librarian ("ALL") Tenure and Employment Status Survey, of the then 198 ABA law schools, only 23.9% of law schools provided tenure-track status for non-director library librarians.<sup>111</sup> The ALL survey data also shows that 41.3% of law schools have sub-type of non-tenure "continuing status employment," while almost 35% of non-director law librarians are at-will employees.<sup>112</sup>

#### IV. WOMEN'S STATUS AND MISSED OPPORTUNITIES

Once women have secured a skills teaching position through the various hiring pipelines, they often encounter more work, less pay, and gendered expectations not expected of their male colleagues.<sup>113</sup> These conditions exist often times without the status or title that other women faculty have and may create an "appearance of equality."<sup>114</sup> Yet, even with these disparate conditions, women in skills positions are at the forefront of the change that is coming to legal education. In fact, many of the newly added provisions to the ABA standards, particularly those related to assessment, advising, and academic support, already exist in skills positions, positioning these women in a place of opportunity to lead law schools into the next era of legal education.<sup>115</sup> This section will focus on the challenges facing women in skills

106. Broadway & Shook, *supra* note 103.

107. *See id.*

108. *See id.*

109. *Id.*

110. *Law School Faculty*, *supra* note 87.

111. ALL-SIS CST Committee, *Academic Law Librarian Tenure and Employment Status Survey*, AM. ASS'N L. LIBR. (May 31, 2013), <http://www.brianhuddleston.com/CST/Wholeting.pdf>.

112. *Id.*

113. Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 B.Y.U. L. REV. 99, 128.

114. Durako, *supra* note 13, at 581.

115. ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2013-2014, CHAPTER 3 PROGRAM OF LEGAL EDUCATION 23-24, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf) (Standard 309 being moved from an interpretation of Standard 303 (303-3) as late as 2013-2014); AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EXPLANATION OF CHANGES 60-61 (Apr. 2014),

positions and will elaborate on the value these positions add to law schools now and in the future.

#### A. *Gender in higher education and law schools*

In higher education, more women are teaching than ever before, but the data makes educational institutions look more diverse than they actually are.<sup>116</sup> Indeed, when you look at the positions that women hold, they are less likely to hold full faculty positions.<sup>117</sup> Tenured positions are still overwhelmingly held by men, with women holding only around a quarter of tenured positions at four-year institutions.<sup>118</sup> The term "the higher the fewer" has been created to recognize that as one looks at academic positions with more prestige, salary, or rank, there are fewer women than men occupying these positions even though women are earning more degrees than men.<sup>119</sup>

One explanation of why the disparity exists is due to the gendered nature of higher education.<sup>120</sup> Gender in this context means the "psychological and social" traits assigned to women and men.<sup>121</sup> The use of the adjectives, feminine and masculine, are in no way a statement that all men or women act in a particularly way but are terms generally associated with men (masculine) and with women (feminine).<sup>122</sup> In general, gender is weaved into the fabric of organizations, education or not.<sup>123</sup> In other words, both men and women develop gender schemas or frameworks for how sex impacts their work (and all other aspects of life) that are developed from childhood.<sup>124</sup> Schemas are how we categorize people so we can make predictions about how they might behave and adjust our behavior accordingly.<sup>125</sup> As it relates

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[https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/201404\\_src\\_meeting\\_materials\\_proposed\\_standards.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/201404_src_meeting_materials_proposed_standards.pdf).

116. LYNN H. COLLINS, JOAN C. CHRISLER & KATHRYN QUINA, CAREER STRATEGIES FOR WOMEN IN ACADEME: ARMING ATHENA 220 (1998).

117. AFT Higher Educ., *Promoting Gender Diversity in the Faculty: What Higher Education Unions Can Do*, at 8 (2011), <https://www.aft.org/sites/default/files/genderdiversity0511.pdf> ("in 2007, only 15.5 percent of women occupied full faculty status compared to 31.2 percent of men"); see also, COLLINS ET AL., *supra* note 116, at 220 (citing research that in a study among two public institutions, women most often occupied lower status positions of instructor or assistant professor).

118. Soc. Sci. Feminist Network Research Interest Grp., *The Burden of Invisible Work in Academia: Social Inequalities and Time Use in Five University Departments*, 39 HUMBOLDT J. SOC. REL. 228, 229 (2017).

119. Heather L. Johnson, *Pipelines, Pathways, and Institutional Leadership: An Update on the Status of Women in Higher Education*, at 1, 8 (2017), <https://www.acenet.edu/news-room/Documents/HES-Pipelines-Pathways-and-Institutional-Leadership-2017.pdf>.

120. Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 229.

121. VIRGINIA VALIAN, WHY SO SLOW?: THE ADVANCEMENT OF WOMEN 11 (1998).

122. See *id.* 12.

123. See McGinley, *supra* note 113, at 107.

124. See VALIAN, *supra* note 121, at 2.

125. See ABIGAIL J. STEWART & VIRGINIA VALIAN, AN INCLUSIVE ACADEMY: ACHIEVING DIVERSITY AND EXCELLENCE 80 (2018).



to gender, men and women share the same schema for males and the same schema for females.<sup>126</sup> For example, a common male schema is that men are independent while a common female schema is that women are communal.<sup>127</sup> When it comes to work, schemas related to gender dictate how society evaluates one's workmanship and in particular, the schemas benefit men positively and women negatively.<sup>128</sup> For instance, gender may be found in how work is divided, stereotypes related to certain positions, or gendered expectations.<sup>129</sup> These gender divisions are often wrongly attributed to the idea that the differences between men or women favor them for certain types of work.<sup>130</sup> Thus, employment practices in academia match those in the professional world, whereby men hold better paying and higher status jobs.<sup>131</sup>

Additionally, where work is coded as feminine, it is often undervalued; while what is coded as masculine is often valued.<sup>132</sup> In education, the role of a professor is typically labeled as masculine.<sup>133</sup> Society often labels men as being thinkers, writers, or philosophers.<sup>134</sup> Meanwhile, work tied to working directly with students and/or administrative work, like planning events, is viewed as feminine.<sup>135</sup> This is consistent with society's labeling of women as being sympathetic or inspirational.<sup>136</sup> As a result of gender's presence in higher education, which often acts invisibly, processes and structures are used that benefit one gender over another.<sup>137</sup> Many of these structures or processes are built around men.<sup>138</sup> For example, the role of a tenure-track professor is often built on the premise that it will be filled by a man who is a breadwinner and available for work at any time because someone else is caring for home and family.<sup>139</sup> Thus, when a woman occupies the role of a tenure-track professor, they are held to the premise of being available at all times, which may not be reality *if* they are tasked at home with caring for home and family.<sup>140</sup>

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126. *See id.* at 82.

127. *See id.* at 86.

128. *See* VALIAN, *supra* note 121, at 2.

129. *See* Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 229.

130. *See* VALIAN, *supra* note 121, at 12.

131. Kristen Monroe, Saba Ozyurt, Ted Wrigley, & Amy Alexander, *Gender Equality in Academia: Bad News from the Trenches and Some Possible Solutions*, 6 *PERSP. ON POL.* 215, 216 (2008).

132. *See* Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 229 (stating differences in gender assignment results in what is valued or not).

133. *See id.*

134. *See* COLLINS ET AL., *supra* 116, at 120 (arguing that traditionally a man's identity was in his mind).

135. *See* Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 229.

136. *See* COLLINS ET AL., *supra* 116, at 120.

137. *See* McGinley, *supra* note 113, at 118–19.

138. *See id.* at 119.

139. *See id.*

140. *See id.*

Further, while higher education institutions require "research, administration, teaching, advising, and service," more value is assigned to those tasks that are deemed masculine.<sup>141</sup> Masculine tasks include research and administration, which are considered more valued because they elevate individual thought and are related to advancing discipline and leadership.<sup>142</sup> These individualized endeavors also are major factors in tenure determinations.<sup>143</sup> Teaching, advising, and service, however, are less valued and spending too much time on them can adversely impact ones' ability to advance within the profession.<sup>144</sup> Women are often teaching and serving more on committees than men, and these communal acts are often coded as feminine.<sup>145</sup> Further, there is "invisible work," which includes the work associated with teaching and service, such as having student meetings, making feedback on assignments, and professional advising or writing letters of recommendation.<sup>146</sup>

In law schools, women's work in various skills positions is often undervalued. In fact, the work in skills positions is often labeled using derogatory terms.<sup>147</sup> For example, calling legal writing the "neglected orphan"<sup>148</sup> or "unrewarding donkey work."<sup>149</sup> These labels are the effect of a divide in legal education and has created a hierarchy based on elevating doctrinal teaching over skills teaching.<sup>150</sup> As a result, the divide separates men who are more likely to occupy these doctrinal positions from women who are more likely to occupy skills positions.<sup>151</sup> Further, these skills positions parallel the work associated as feminine in that they include significant student interaction and grading or providing feedback.<sup>152</sup> This work can result in less time for work, such as research and writing, that is more highly favored for advancing.<sup>153</sup> Even where women engage in scholarship, the scholarship work may be

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141. Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 230.

142. *See id.* at 231.

143. *See id.*

144. *See id.*

145. *See* STEWART & VALLIAN, *supra* note 125, at 96; *but see* Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 240 (concluding that their study did not support the conclusion that women provide more invisible work than men).

146. *See* Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 231 (and it can also include other work that is not recognized such as the creation of reports associated with committee work).

147. *See* Durako, *supra* note 13, at 578.

148. *Id.* at 578 (quoting language from several old sources related to legal writing).

149. Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 112–13 (2015).

150. *See id.* at 114.

151. *See id.* at 115.

152. *See id.* at 120.

153. *See* Durako, *supra* note 13, at 584.

devalued if it focuses on skills pedagogy.<sup>154</sup> Scholarship related to skills pedagogy is the type of scholarship that allows the field to grow and it signals the work is important.<sup>155</sup>

A woman's failure to conform to gendered expectations may result in being socially ostracized among colleagues or poor evaluations.<sup>156</sup> In occupying faculty positions focused on skills, women encounter gender expectations such as doing emotional labor to shepherd, comfort, and listen to students.<sup>157</sup> In addition to the structures and process built around men, the gendered expectations, and the disadvantaged work, women may find they live with an internal conflict.<sup>158</sup> That conflict may include embracing their desire to be both a great teacher (coded as feminine) and their desire to also be a great scholar (coded as masculine).<sup>159</sup> In accomplishing the feat of becoming a great scholar, women are then faced with the burden of choosing their professional identity over their gender role.<sup>160</sup> In making a choice, there is a risk that nonconformance to the gendered role may lead others to block a woman's ability to gain tenure or promotion.<sup>161</sup>

#### B. Status and Promotion

Being aware of the differing values placed on types of work is important, because when men receive an advantage and women a disadvantage, even on a small scale, long-term consequences accrue.<sup>162</sup> One example of this accrual of advantage or disadvantage, is when women are not heard in a meeting.<sup>163</sup> Being ignored in one meeting creates less value or prestige in the future, making it more likely that the person will not be taken seriously in subsequent meetings, which often spills into other professional encounters.<sup>164</sup> As a result, failure comes not just when women seek promotion, but in each of the accumulated small failures of being ignored or otherwise not taken seriously.<sup>165</sup> But what impact occurs for those women who are in

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154. See Stanchi & Levine, *supra* note 10, at 22 (arguing legal writing scholarship is devalued).

155. See Mary Beth Beazley, *Finishing the Job of Legal Education Reform*, 51 WAKE FOREST L. REV. 275, 296 (2016).

156. See COLLINS ET AL., *supra* note 116, at 121 (stating that women receive social sanctions for failing to conform to gendered expectations).

157. See McGinley, *supra* note 113, at 99.

158. See COLLINS ET AL., *supra* note 116, at 122.

159. See *id.* at 122.

160. See *id.* at 121.

161. See *id.*

162. See VALIAN, *supra* note 121, at 3.

163. See *id.* at 4.

164. See *id.*

165. See *id.*

meetings not raising their voices because they've been told not to?<sup>166</sup> Thus, when we look at the ability of women to move up the academic ladder, it should come as no surprise that women face difficulties.

In fact, rather than seeking to move up the law school ladder, some women will likely exit legal teaching.<sup>167</sup> In looking at higher education generally, the term "leaky pipeline" has been created to acknowledge that while more women are entering academic pipelines, they gradually leave the academy at each stage of the academic ladder.<sup>168</sup> In legal education, white men were less likely to leave tenure-track positions when compared to white women and women and men of color.<sup>169</sup> Worst yet, women leave teaching at higher rates than men.<sup>170</sup> In looking at promotions for women who obtained tenure, even where men and women are hired in the same cohort, men, particularly white men, were more likely to receive promotions such as holding a chair, reaching full professor status, or serving as a dean.<sup>171</sup>

In attempting to advance out of nontenured positions, women are generally less likely than men to do so.<sup>172</sup> This is evidenced by the amount of white law school instructors who began their careers in nontenured positions in 1989-91.<sup>173</sup> By 1997, women were less likely to move into tenure-track positions when compared to men (the numbers for minority instructors were too small to draw adequate data).<sup>174</sup>

As mentioned, many skills positions are nontenured.<sup>175</sup> In fact, as women in skills positions attempt to move up the academic ladder, they encounter resistance from other faculty members: devaluing their scholarship, service, and even the intellectual stimulation of the work they do.<sup>176</sup>

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166. See *Legal Writing Professors: A Story of Hierarchy Within a Hierarchy*, ABOVE THE LAW (Sept. 4, 2018), <https://abovethelaw.com/2018/09/legal-writing-professors-a-story-of-a-hierarchy-within-a-hierarchy/>.

167. See Stanchi & Levine, *supra* note 10, at 23.

168. See Soc. Sci. Feminist Network Research Interest Grp., *supra* note 118, at 229; but see David Miller, *A Metaphor to Retire*, INSIDE HIGHER ED (Mar. 3, 2015), <https://www.insidehighered.com/views/2015/03/03/essay-calls-ending-leaky-pipeline-metaphor-when-discussing-women-science> (arguing we should abandon the leaky pipeline metaphor, particularly as it relates to science and engineering, because women may be leaving the academy to make contributions to society).

169. See Deborah Jones Merritt & Barbara F. Reskin, *New Directions for Women in the Legal Academy*, 53 J. LEGAL EDUC. 252, 489, 491 (2003) (stating for those on the tenure-track between 1986-1991, white women and faculty of color had higher departure rates than white men).

170. See Merritt & Reskin, *supra* note 169, at 491.

171. See *id.*

172. See *id.* at 251.

173. Deborah Jones Merritt, *Are Women Stuck on the Academic Ladder?: An Empirical Perspective*, 10 UCLA WOMEN'S L. J. 249, 251 (2000).

174. *Id.*

175. See McGinley, *supra* note 113, at 128; Stanchi & Levine, *supra* note 10, at 23.

176. See *id.*, at 134-35.

Interestingly, men in these skills positions are often perceived as occupying these positions as a means to moving to higher status positions and are viewed as equal while in these positions.<sup>177</sup> Women do not receive the value of these same perceptions.<sup>178</sup> Indeed, women may continue to suffer because law schools wrongly believe they have addressed gender disparities in hiring by hiring more women in these positions, but keeping them isolated in skills positions has the effect of "more women are in the tent," while others are "not [even] invited to the table."<sup>179</sup>

### C. Examining The Value of Skills Instructors

To overcome the gendered biases in law schools, it is important for law schools to start assigning more value to the work done in skills positions. Historically, as it relates to skills courses taught by legal writing, academic and bar support, or clinical instructors, the work done by these instructors often do not fit within the traditional teaching of law schools.<sup>180</sup> Indeed, historically law schools were designed around large classrooms that needed a few skilled instructors, but skills classes often required smaller classes to adequately teach students.<sup>181</sup> Thus, though the need for more skills instructors has grown, the respect and recognition for those instructors within the legal academy did not grow.<sup>182</sup>

After the ABA started evaluating the Standards in 2008, they made a major revision to the Standards and Rules of Procedure for Approval of Law Schools in 2014.<sup>183</sup> These Standards are creating a shift from the traditional academic focus of law teaching to practice-ready teaching.<sup>184</sup> The Standards require law schools to engage in assessment, academic support, advising, and show efforts to improve bar passage.<sup>185</sup> In light of the Standards, those in skills positions should be recognized and compensated for the efforts that keep law schools compliant.<sup>186</sup> To effectuate this change, law schools need to create a balance between scholarship and teaching.<sup>187</sup>

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177. *See id.* at 133.

178. *See id.*

179. Durako, *supra* note 13, at 586.

180. *See* Stanchi & Levine, *supra* note 10, at 3, 6.

181. *See id.* at 7.

182. *See id.* at 7–8.

183. Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, *2008-2014 Comprehensive Review Archive*, A.B.A. (Aug. 15, 2008), [https://www.americanbar.org/groups/legal\\_education/committees/standards\\_review/comp\\_review\\_archive/](https://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive/) [hereinafter "2008-2014 Comprehensive Review Archive"].

184. *See* Beazley, *supra* note 155, at 280.

185. *See* 2008-2014 Comprehensive Review Archive, *supra* note 183.

186. *See* Brian Sites, *Experiential Learning: ABA Standards 303 and 304*, BEST PRACTICES FOR LEGAL EDUC. (Sept. 13, 2015), <https://bestpracticeslegaled.albanylawblogs.org/2015/09/13/experiential-learning-aba-standards-303-and-304/>.

187. *See* Beazley, *supra* note 155, at 281.

Several of the mandated changes enlarged the presence of skills instruction or programs. For example, the Standards increased experiential learning by requiring law schools to provide at least six credit hours of experiential courses.<sup>188</sup> While most law schools already provided experiential learning in their curriculum, the Standards mandated that all students engage in experiential learning.<sup>189</sup> The Standards replaced vague language around experiential learning that "each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession."<sup>190</sup> Greater specificity was also provided as to the type of writing all students must satisfy.<sup>191</sup> ABA Standard 316(c)(3) also created a bar preparation program, a measure of demonstrating efforts to improve bar passage, and states:

Actions by the law school to address bar passage, . . . the demonstrated value and effectiveness of its academic support and bar preparation programs: value-added, effective and pervasive actions to address bar passage problems will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.<sup>192</sup>

Thus, to satisfy these Standards law school need to evaluate the resources and value they place into satisfactorily comply with these standards.

Other Standards recognize the value of instruction that results in better student learning. Standard 314 states law schools "shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."<sup>193</sup> Assessment, particularly formative assessment, is the work that many academic support, legal writing, and clinical instructors engage in. Formative assessment are assessments which are designed to improve student learning

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188. See AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017-2018, at 23 (2017) [hereinafter "APPROVAL OF LAW SCHOOLS 2017-2018"], [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017\\_2018\\_standards\\_chapter3.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf).

189. See Sites, *supra* note 186.

190. *Id.* (quoting *Managing Director's Guidance Memo*, A.B.A. (Mar. 2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_standards\\_303\\_304\\_experiential\\_course\\_requirement\\_.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_.pdf)).

191. See APPROVAL OF LAW SCHOOLS 2017-2018, *supra* note 188, at 16; *but see* Stanchi & Levine, *supra* note 10, at 14 (noting how the Standard in existence when she wrote her article that the Standards seemed to be "mere window dressing").

192. APPROVAL OF LAW SCHOOLS 2017-2018, *supra* note 188, at 25 (Standard 316(c)(3): Bar Passage).

193. *Id.* at 23 (Standard 314: Assessment of Student Learning).

by giving students feedback to improve on future assessments.<sup>194</sup> Summative assessments are end assessments designed to determine if the student has met the learning outcomes of the course.<sup>195</sup> Assessments are not only necessary for stronger learning experiences in a course, but they also prepare students for the legal profession which requires constant self-paced learning.<sup>196</sup> Academic support programs often teach students how to interpret feedback so that it is meaningful, and in many cases, gives students the tools to ask follow-up questions of their professors and learn from their feedback.<sup>197</sup> Academic support programs often assist students in learning even from summative feedback through exam reviews, whereby the academic support instructor meets with a student to discuss their exams in comparison to a model.<sup>198</sup> It is well-known that legal writing instructors provide numerous formative assessments through the review of students' assignments and in-person individual meetings.<sup>199</sup> Further, clinicians and law librarians provide feedback to students during their experiences work with a client (of preparing for representation)<sup>200</sup> or engaging in legal research and learning to navigate sources<sup>201</sup>

Academic support, rather than being an interpretation under the old Standards,<sup>202</sup> now requires a design that "afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession."<sup>203</sup> In evaluating an academic support program, ABA site teams will look at how they are staffed, what the program

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194. See MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 137 (2009).

195. See Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 172 (2012).

196. See *id.* at 151 (arguing legal education doesn't teach students expert learning strategies which is required for the profession).

197. See Louis N. Schultze Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meets the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 60-61 (2012).

198. See *id.* at 63.

199. See Beazley, *supra* note 155, at 309.

200. See William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View From the First Floor*, 28 AKRON L. REV. 463, 481-82 (1995).

201. See Amy Emerson, *The Rise of Experiential Legal Research Instruction*, TRENDS INTERACTIVE (Sept. 12, 2016), <https://www.wshein.com/blog/2016/09/12/the-rise-of-experiential-legal-research-instruction/>.

202. See AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS AUGUST 2014, at 33 (Aug. 2014), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_redline.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_redline.pdf).

203. APPROVAL OF LAW SCHOOLS 2017-2018, *supra* note 188, at 21 (Standard 309: Academic Advising and Support).

includes, and how students participate.<sup>204</sup> Academic support is still an emerging field in legal education. At its core, academic support is designed to teach students how to become better learners.<sup>205</sup> Academic support also demystifies law school by making the unsaid explicit, such as, helping students understand that law school is built on a model that requires them to self-teach before class and in preparation for the exams (in many ways preparing them to become expert lawyers) and helping students learn how to become effective learners.<sup>206</sup>

In requiring law schools to incorporate better instructional tools and practice-readiness like assessment, academic support, bar support, and experiential learning, the ABA has given law schools an opportunity to reconsider the value they assign to work that has been done by women in skills positions for decades.<sup>207</sup> Indeed, the Standards have even taken on the work of advising, which often falls heavily on women and minorities, and require schools to clearly communicate graduation requirements to students.<sup>208</sup> While the ABA can do significantly more to provide security to skills faculty and the women doing the work, like amending Standard 405 to improve status of skills faculty, law schools can use other Standards to rethink the value assigned to skills work.<sup>209</sup> This value is incredibly important to assign now so that tenured faculty do not simply relegate these Standards to skills faculty.<sup>210</sup> Achieving gender equity requires effort, experimenting and redesigning based on failure, and choosing strategies premised on being the best.<sup>211</sup>

In evaluating faculty yearly, tenure considerations, or promotion, and similar value to scholarship can be assigned for teaching that incorporates these Standards into courses or programming.<sup>212</sup> That value may include reevaluating the weight of teaching efforts when compared to scholarship,

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204. See Am. Bar Ass'n, Section of Legal Educ. & Admissions to the Bar, *Site Evaluation Workshop for Site Team Chairs, Law School Representatives and New Site Evaluators*, A.B.A. (Sept. 2018), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2018-site-workshop-agenda-book.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2018-site-workshop-agenda-book.pdf) [hereinafter "*Site Evaluation Workshop*"].

205. See Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 161 (1995).

206. See *id.*

207. See Beazley, *supra* note 155, at 312 (arguing law schools can remain attached to old ways of doing things or face becoming irrelevant).

208. See *Site Evaluation Workshop*, *supra* note 204.

209. See generally Kristen Konrad Tiscione, "*Best Practices*": *A Giant Step Toward Ensuring Compliance with ABA Standard 405(c), a Small Yet Important Step Toward Addressing Gender Discrimination in the Legal Academy*, 66 J. LEG. EDUC. 566 (2017) (arguing how Section 405(c) can be best implemented but recognizing that more is necessary to provide fairness).

210. See Beazley, *supra* note 155, at 276.

211. Virginia Valian, *Beyond Gender Schemas: Improving the Advancement of Women in Academia*, 16 NWSA J. 207, 216 (2004).

212. See Beazley, *supra* note 155, at 301 (arguing teaching in a way that fulfills the Standards is important just like scholarship).



financial incentives, implementing Standards as a requirement for some or all doctrinal courses, or providing a respite from scholarship requirements.<sup>213</sup> In reweighting the value of teaching, evidence of teaching is available and similar to the evidence of scholarship. For example, a syllabus and a course page can show the number of assessments given in a course and assessments (e.g., assignments or papers) a professor has graded or provided feedback on. And law schools can create a culture of peer evaluation of teaching.<sup>214</sup> Further, new teaching innovations can be described and presented to other faculty members.<sup>215</sup> Similar to the research grants law schools award, teaching grants can serve as financial incentives awarded to professors willing to innovate their teaching to align with the Standards.<sup>216</sup>

Additionally, mandating that work typically associated with skills instruction (e.g., assessment or feedback) be required in certain or in all doctrinal classes and skills courses can have the added benefit of making it valuable because it now requires time and effort from everyone rather than just women in certain positions. For example, this mandate might be similar to movements like writing across the curriculum<sup>217</sup>, academic support across the curriculum<sup>218</sup> or assessment across the curriculum.<sup>219</sup> Finally, we can relieve scholarship burdens for a certain period of time to allow individuals to realign their teaching practices with the Standards.<sup>220</sup> This would mimic what is done when faculty occupy administrative positions realigning teaching and scholarship burdens to allow those with administrative burdens to focus on the work.<sup>221</sup> Reassigning value to the work that has been done by skills faculty for decades means better bar passage and practice-ready graduates; however, failing to make the necessary changes means that law schools "risk

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213. See, e.g. Beazley *supra* note 155, at 323 (arguing law schools should adjust scholarship demands for teaching).

214. See Mary A. Lynch, *Experience with Peer Support, Peer Review and Feedback on Teaching?*, BEST PRACTICES FOR LEGAL EDUC. (Sept. 25, 2017), <https://bestpracticeslegaled.albanylawblogs.org/2017/09/25/experience-with-peer-support-peer-review-and-feedback-on-teaching/>.

215. Andicurcio, *Summer Teaching Innovation Grants*, BEST PRACTICES FOR LEGAL EDUC. (Mar. 30, 2016), <https://bestpracticeslegaled.albanylawblogs.org/2016/03/30/summer-teaching-innovation-grants/>.

216. See *id.*

217. See generally Pamela Lysaght & Christina D. Lockwood, *Writing-Across-The-Law-School-Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73 (2004).

218. See Schultze, *supra* note 197, at 1.

219. See Sandra L. Simpson, *Coordinating Formative Assessment Across the Curriculum: A View from the Desk of the Associates Dean's Desk*, 95 U. DET. MERCY L. REV. 91 (2017).

220. See Beazley, *supra* note 155, at 301.

221. See *id.*

becoming irrelevant if they insist on clinging to the old ways of doing things, taking only the most minimal steps to comply with educational reforms."<sup>222</sup>

## V. CHALLENGES, OPPORTUNITIES AND ASPIRATIONS

Applying feminist pedagogy, this section will explore how women can succeed in law schools if they are provided with the right support. That support includes communities of practice, allies, mentorship—including mentorship that aids in building a pipeline. Ultimately, to resist and change the gender disparities in legal education, we need both men and women doing the work.

### A. Feminist Pedagogy

The primary goal of feminist pedagogy is to achieve social justice for women and there are many recognized approaches and strategies employed to reach this goal.<sup>223</sup> The orientation of one who applies feminist pedagogy is influenced by the political and social climates under which educators research, write, and teach.<sup>224</sup> While the challenges are many, there are ways in which pipelines present opportunities for women in legal education. In this section we use liberal, caring, collective resistance, and deconstruction feminist perspectives as frameworks to describe the challenges, opportunities and aspirations for women in legal education.

#### 1. Liberal

Feminist educators with a liberal education perspective focus on equality in their teaching and scholarship.<sup>225</sup> The curricular focus is on providing women educational opportunities equal to men and removing any barriers to discrimination based on gender.<sup>226</sup> As noted in our discussion of intersectionality above, this perspective is often criticized for its failures to acknowledge the privileges and hardships women experience as a result of race, class, sexuality, or ability.<sup>227</sup>

#### 2. Caring

Feminist pedagogy based on caring fosters learning environments where the instructor and the learners feel safe to acknowledge the detriment, and for some, the benefits, of gender discrimination and oppression.<sup>228</sup> This perspective is particularly focused on learning through relationship

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222. *Id.* at 312.

223. See Berenice Malka Fisher, *Feminist Pedagogy*, in 2 GENDER AND EDUCATION: AN ENCYCLOPEDIA, at 731 (Barbara J. Bank ed., 2007).

224. *See id.*

225. *See id.*

226. *See id.*

227. *See id.* at 732.

228. *See id.*

building.<sup>229</sup> Teaching methods centered on caring and connection are in contrast with traditional academic perspectives that denigrate caring in education as motherly or therapy.<sup>230</sup>

### 3. *Collective Resistance*

Inspired by radical, socialist, and Black feminist movements, collective resistance feminist pedagogy focuses on consciousness raising through the exploration of gender injustices women experience.<sup>231</sup> While this perspective acknowledges the power dynamics that affect the interactions between students and teachers, it focuses on equality in the learning environment.<sup>232</sup> Like feminist pedagogy based on caring, collective resistance is often criticized as formal education places higher intellectual value on expertise than feelings or emotions.<sup>233</sup> Yet, collective resistance feminist educators recognize the collective strength and educational value that occurs when different and shared experiences of women are highlighted in the classroom.<sup>234</sup>

### 4. *Deconstruction*

Feminist pedagogy of deconstruction focuses on "how language (or 'discourse') continually constructs the world into mutually exclusive and often hierarchically arranged opposite (or 'binaries')." <sup>235</sup> Deconstructionist feminist pedagogy encourages criticism of language in a manner which exposes the "complex and fluid social constructions" of self like gender, class, or race.<sup>236</sup> This perspective is critical of caring feminist pedagogy because it assumes that all women are caring.<sup>237</sup> It is likewise critical of collective resistance pedagogy because it assumes that female experiences are homogeneous.<sup>238</sup>

## B. *Application of Feminist Pedagogy*

### 1. *Communities of Practice ("CoP")*

Founded in feminist pedagogy, CoP are centered on the concept of situated learning—the idea that learning "as it normally occurs is a function of the activity, context, and culture in which it occurs or is situated."<sup>239</sup> CoP are

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229. *See id.*

230. *See id.*

231. *See id.* at 733.

232. *See id.* at 734.

233. *See id.*

234. *See id.* at 735

235. *See id.*

236. *Id.* at 736.

237. *See id.*

238. *See id.*

239. ROBERT W. ROWDEN, WORKPLACE LEARNING: PRINCIPLES AND PRACTICE 66 (2007).

social networks of people with shared interests who learn from one another over a period of time.<sup>240</sup> CoP provide opportunities for participants to “construct knowledge actively with other community members through dialogue, discourse, and experiences.”<sup>241</sup> CoP are centered in meaningful dialogue, which contributes to members obtaining knowledge in a holistic manner.<sup>242</sup> Successful CoP require mutual engagement, joint enterprise, and shared repertoire.<sup>243</sup> The underlying goal of CoP is learning that results in a behavioral change occur when members explain and challenge the status quo.<sup>244</sup> For this reason, CoP about women in legal education may lead to behavioral changes among students, faculty, and administrators which result in equitable changes which benefit women in legal education. CoP can serve as mechanisms to help law schools better understand the gendered experiences of students and faculty.

## 2. *Allyship*

When women find allies, they can take advantage of the collective resistance framework of feminist pedagogy, whereby men engage in becoming conscious of gender injustices in order to move toward a more equitable environment. Undergraduate institutions, particularly in regard to STEM, have started to address gender inequality by targeting men to become allies and advocates for women.<sup>245</sup> This program was first started at North Dakota State University.<sup>246</sup> The program is premised on the idea that in male-dominated institutions, men play a critical role in creating more inclusive environments.<sup>247</sup> The programs are designed to “(1) educate [male] faculty about gender inequity in academia; (2) introduce [male] faculty to strategies for bringing positive change in their departments and colleges; and (3) build a supportive network of male Advocates and Allies for all faculty.”<sup>248</sup> The specific program requires advocates, who are senior male faculty with advanced understanding of gender bias, to train allies who are male faculty and identify

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240. *See id.*

241. VANESSA SHEARED ET AL., THE HANDBOOK OF RACE AND ADULT EDUCATION: A RESOURCE FOR DIALOGUE ON RACISM 253 (2010).

242. *See id.* at 253–54.

243. *See* JOSEPH A. RAE LIN, WORK-BASED LEARNING: BRIDGING KNOWLEDGE AND ACTION IN THE WORKPLACE 93–94 (2008).

244. *See id.* at 97; *see also* ROWDEN, *supra* note 239, at 67.

245. *See* Adrienne Robyn Minerick et al., *Interactive Panel on Advocacy Tips: An Initiative to Provide Individuals the Tools to Advocate for Women and Underrepresented Minorities*, AM. SOC’Y FOR ENGINEERING EDUC. (June 16, 2014), <https://www.asee.org/public/conferences/32/papers/9377/view>.

246. *See* Canan Bilen-Green et al., *Implementation of Advocates and Allies Programs to Support and Promote Gender Equity in Academia*, AM. SOC’Y FOR ENGINEERING EDUC. (June 16, 2014), <https://www.asee.org/public/conferences/56/papers/11743/view>.

247. *See* Minerick et al., *supra* note 245.

248. Bilen-Green et al., *supra* note 246.

as women allies.<sup>249</sup> These allies commit to use their privilege in various ways, including to collaborate with women on research or peer review teaching, leverage their voice in meetings, and ensure social events are open to women.<sup>250</sup> The educational component includes raising men's awareness of gender equality through education and use of the Implicit Association Test.<sup>251</sup>

Even absent these programs, men can become allies for women by first educating themselves about the gender disparities in their offices.<sup>252</sup> Men can also mitigate when women go unheard by amplifying, which is to restate and credit a woman with an idea expressed in a meeting.<sup>253</sup> Additionally, men can resist microaggressions against women is by recognizing them when they occur.<sup>254</sup> One way to do so is to employ the following methods: opening the front door; observe by describing what you see; think by stating what you think about the observation; feel by expressing how you felt; and desire by expressing what you want to happen.<sup>255</sup>

### 3. *Mentoring*

Faculty serving as mentors to both students who have teaching potential and to colleagues, can have a direct and positive impact on the recruiting, hiring and retention of women in legal education. Moreover, mentoring can also have a profound effect on a mentee-faculty member's scholarship, teaching, and overall professional development, ultimately resulting in increased opportunities for tenure and promotions.

#### a. *Faculty Mentoring Students as Prospective Law Teachers*

While the ABA has developed standards and the AALS has developed guidelines, law schools should be committed to and place a premium on having both racial and gender diverse faculties. Faculties themselves can play a significant role in accomplishing this goal by assisting in building a pipeline for women to become law teachers, starting with students in their classes. In directly addressing pipelines for hiring minorities, it should be a faculty priority to develop a pipeline for minority students to become law professors.<sup>256</sup> The same practice should be applied to recruiting women as law faculty.

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249. See Minerick et al., *supra* note 245.

250. See *id.*

251. See *id.* (providing advocacy tips for men).

252. See *id.* (providing general readings about gender inequality).

253. See Emily Aries, *5 Ways Men Can be Women's Allies at Work*, FORBES (Aug. 15, 2017), <https://www.forbes.com/sites/emiliearies/2017/08/15/5-ways-men-can-be-womens-allies-at-work/#4c7d56f13de3>.

254. See Kerry Ann Rockquemore, *Allies and Microaggressions*, INSIDE HIGHER ED (Apr. 13, 2016), <https://www.insidehighered.com/advice/2016/04/13/how-be-ally-someone-experiencing-microaggressions-essay>.

255. See *id.*

256. See AALS HANDBOOK, *supra* note 64.

There should be intentional efforts by faculty to encourage female students to consider law teaching as an option, followed by providing meaningful mentoring to educate and prepare students for the process.

Providing meaningful mentoring to students is key to ensuring that once they are ready to enter the market, they are well prepared, and thus enhances their chances of being hired. Faculty should encourage their interested students to consider participating in journals, developing quality seminar papers into law review articles, engaging in other writing opportunities, and seek clerkships to further enhance their marketability. More importantly, students interested in teaching should be advised on the hiring process, both the traditional AALS hiring process and alternative processes, as well as the option for fellowships, Visiting Assistant Professor Programs ("VAP" or "VAPS"), and LLM programs. The guidance and insight provided through mentoring by faculty during students' matriculation, can prove invaluable to their former students during the law faculty recruitment and hiring process.

*b. Faculty Mentoring Faculty*

Faculty-to-faculty mentoring is not a new concept in legal education. Among law school faculty, there is the expectation, and at some institutions a requirement, that senior faculty will mentor junior faculty through the tenure and promotion process. This type of mentoring resembles the tenure and promotion process within other professions. For example, in the medical profession, new doctors serve as residents and during their residency period, practice medicine under the supervision of a senior physician.

In law schools, senior faculty to junior faculty mentoring is viewed by some as a "forced" relationship. In this view, the mentors view it as an additional and sometimes burdensome responsibility, while the mentee may view it as simply a means to an end, with the mentoring relationship dissipating soon after the tenure and/or promotion is earned. However, applying feminist pedagogy to mentoring differs from traditional law school senior-to-junior faculty mentoring. Rather, the feminist pedagogy encourages the development of organic mentoring relationships that are not dependent on status, but instead based on common goals and interest. For example, the interest can be centered on the subject area they teach, a research area or even the student organizations they advise. There are many opportunities for faculty members to provide support to each other in the work place, and organic mentoring is an effective tool to accomplish this goal.

*c. Faculty Mentoring Visiting Assistant Professor Programs (VAPS) positions and Fellows*

Schools should also consider creating VAPS or fellowships that target women. These types of programs should provide an opportunity to teach, while also allowing substantial time and support for scholarship.<sup>257</sup> In

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257. *See id.*

general, VAPS and fellowships are appealing to prospective law teachers as these positions provide an opportunity for participants to write, research and receive valuable mentorship from faculty. Through faculty mentoring, VAP participants and fellows receive direct guidance and support in further developing the courses they teach and, equally important, assistance with their scholarship. Scholarship assistance often includes receiving feedback on works-in-progress, developing a scholarship agenda, and insight into the article placement, publishing, and acceptance process.

While VAPS and fellowships are valuable to the individuals participating in these programs, law schools also receive a major benefit. Specifically, law schools benefit by receiving course coverage at a fraction of the cost of a tenure-earning or tenure-track professor teaching the same course. However, the greatest benefit to law schools is being able to evaluate, first-hand, the fit (or lack thereof) of VAP participants and fellows for their school. This evaluation process provides the opportunity to evaluate not only teaching effectiveness, but also general fit, commitment to the schools' mission, and even scholarship potential of the candidate. This direct knowledge about the candidate may lead to greater long-term retention and success than hiring a candidate that's new to teaching through the traditional AALS recruitment process.

## VI. CONCLUSION

While some progress has been made with the AALS publishing "good practices," the ABA establishing standards for diversity and inclusion, and some law schools moving to unitary tenure track systems, there must be greater commitment by the legal academy to establish more pipelines for hiring and retaining women in legal education. The first step is acknowledging that challenges currently exist in the hiring pipelines in legal education. In fact, ABA disclosure data illustrates that the hiring of women in law schools is disproportionate to the number of men being hired as traditional podium faculty members.<sup>258</sup> While at the other end of the spectrum, in the skills areas, women are prominent. However, these women are not advancing at the same rate and are paid much less in comparison to their male colleagues. As long as women are relegated to the "pink ghetto," the leaky pipeline phenomenon continues.

To ensure law faculties are diverse and inclusive, it is essential that law schools take concrete steps during the recruitment and hiring process, as these steps (or, in some cases, missteps) have a direct impact on the retention of women in legal education. These steps can bear great rewards or steep consequences for law faculties, universities, and students. Applying the feminists pedagogy through communities of practice, allyship, and mentoring, law schools can change the current trajectory and state of the "pink ghetto" by not only changing law school faculties into better representations of our

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258. See 509 *Required Disclosures*, *supra* note 36.

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*THE "PINK GHETTO" PIPELINE*

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changing student body, but also of the global communities our students will take an oath to serve in.