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The Ugly Truth about Legal Academia

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The Diversity in Legal Academia (DLA) project is the first formal, comprehensive, mixed-method empirical examination of the law faculty experience, utilizing an intersectional lens to investigate the personal and professional lives of legal academics. This Article reports on the first set of findings from that study, which I personally designed and implemented. DLA data reveal that ongoing privilege and institutional discrimination based on racism and sexism create distinct challenges for particular law faculty. Interactions between women of color law faculty and both their faculty colleagues and their students indicate persisting racial and gender privilege, resulting in ongoing bias. These findings cry out for law schools to intensify efforts at strengthening rather than de-emphasizing diversity, as many may be tempted to do during this period of great turmoil in legal education. In fact, law schools should provide greater institutional support to faculty, which will help not only those who are underrepresented, marginalized, and vulnerable, but all law faculty, law students, and the legal profession overall. This Article draws from both quantitative and qualitative data gathered from this national sample of law faculty to focus on the ways in which race, gender, and the combination of the two affect law faculty interactions with colleagues and students. It also proposes individual strategies and structural solutions that can be utilized in order for legal academia to live up to its full potential.

[†] Associate Professor, Thomas Jefferson School of Law. The Author received support for this project while a Visiting Scholar at Berkeley Law's Center for the Study of Law & Society in 2013. Preliminary findings from the Diversity in Legal Academia (DLA) study received useful feedback at the following meetings: South Asian Legal Academics (SALA) Inaugural Workshop (Aug. 2014); eCRT Workshop (June 2014); AALS Annual Meeting, Presidential Workshop on Law Teachers of the Future (Jan. 2014); AALS Annual Meeting, "Hot Topics" session on Enhancing the Law School Climate (Jan. 2014); Southern California Junior Faculty Workshop (May 2013); *Berkeley Journal of Gender, Law & Justice* Symposium (Mar. 2013); AALS Annual Meeting, Section on Law & the Social Sciences session (Jan. 2013). Numerous colleagues and mentors have supported DLA, including: Carmen Gonzalez, Angela Onwuachi-Willig, Herma Hill Kay, Bryant Garth, Linda Pololi, Angela Harris, Kevin Johnson, Lisa Ikemoto, Anupam Chander, Andrea Freeman, Jordan Woods, Bertrall Ross, Wendy Greene, Bill Hines, and Rudy Hasl. Above all, thanks are due to the 93 law faculty members who participated in the DLA study and whose perspectives are shared anonymously herein. The author holds full copyright to this article. For reprint permissions, please contact the author directly.

Key words: legal education, legal profession, Law & Society, women in law, intersectionality, empirical methods in Critical Race Theory (eCRT)

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INTRODUCTION

For decades, the diversity debate in courts, public opinion, and academic circles has centered on student diversity.¹ There has been virtual silence on the topic of diversity in academia. This may be because there has never been a formal, comprehensive, empirical study of law faculty to inform the debate.

"Yet, faculty diversity may be especially critical today based on the unique challenges facing legal academia."² With law school applications at record low levels and shrinking enrollment at many schools, some law schools have adopted aggressive cost-cutting measures, with more drastic changes likely ahead.³ Faculty hiring has decreased or ceased altogether at many law schools.⁴ A few law schools have begun firing faculty and staff, as well as closing facilities.⁵ While faculty of color and female faculty have been underrepresented in legal academia since law schools first opened their doors, recent changes threaten to deplete their numbers even further.⁶

Ironically, just as law schools are poised to decrease their attention on faculty diversity, it may be in their best interest to elevate its importance. Law schools are changing to adapt to coming times, becoming more student-centered, focusing more on skills-based learning, and creating other incentives to attract students and keep them in school. Prospective students may be especially drawn to law schools

¹ See generally *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014); *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411 (2013); *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 311-14 (1978); Kathryn Alfisi, *Diversity in Higher Education: Is Affirmative Action Nearing its End?*, WASH. LAWYER (Dec. 2012), <http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/december-2012-affirmative-action.cfm>; Adam Liptak, *Justices Take Up Race as a Factor in College Entry*, N.Y. TIMES, Feb. 22, 2012, at A1; *Room for Debate: Diversity Without Affirmative Action?*, N.Y. TIMES (May 13, 2013), <http://www.nytimes.com/roomfordebate/2013/05/13/can-diversity-survive-without-affirmative-action>.

² Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 354 (2014).

³ A DISTURBING TREND IN LAW SCHOOL DIVERSITY, <http://blogs.law.columbia.edu/salt> (last visited Feb. 15, 2015) (describing declining law school enrollment rates for African American and Mexican American students); see also Chelsea Phipps, *More Law Schools Hagggle on Scholarships*, WALL ST. J., (July 29, 2012, 9:23 PM), <http://online.wsj.com/article/SB10000872396390444130304577557182667927226.html>.

⁴ Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL ST. J. (July 15, 2013, 4:39 PM), <http://online.wsj.com/news/articles/SB10001424127887323664204578607810292433272>.

⁵ See THOMAS M. COOLEY LAW SCHOOL STATEMENT (July 1, 2014), <http://www.cooley.edu/news/statement.html>; see also Dan Filler, *Retrenchment at Thomas Cooley Law*, FACULTY LOUNGE (July 03, 2014, at 9:22 AM), <http://www.thefacultylounge.org/2014/07/retrenchment-at-thomas-cooley-law.html> (discussing Cooley's announcement regarding "faculty and staff layoffs and other cutbacks").

⁶ See Katherine Barnes & Elizabeth Mertz, *Is It Fair? Law Professors' Perceptions of Tenure*, 61 J. LEGAL EDUC. 511, 512 (2012).

that have diverse faculty, and existing students may be more likely to stay in school when they are engaged in learning, mastering practical material, and connected with the institution overall.⁷ All of these goals are more likely to be achieved when diverse faculty stay employed at institutions of legal education.⁸

Though abysmal, the lack of numeric representation of women of color, white women, and men of color in legal academia tells only part of the story; to grasp the full context, we must also evaluate the faculty experience. In other words, we must “look beyond [the numbers] to examine the quality of the academic experience” for diverse faculty.⁹ Only by understanding workplace challenges can we seek to reverse the low retention rates for diverse faculty; doing so would likely increase retention rates for students as well. Until now, there has not been a mechanism for evaluating the experience of diverse faculty. No formal mixed-method empirical study has investigated the experience of law faculty, examining how race and gender create challenges and opportunities for particular law faculty.

This Article presents the first set of findings from the Diversity in Legal Academia (DLA) study, which itself represents the first formal, empirical, mixed-method study of the law faculty experience utilizing an intersectional lens. As the Principal Investigator of the DLA study, as well as the author of this Article, I am wholly responsible for the project. I designed the mixed-method study, from conception through dissemination. I personally conducted each of the 93 interviews with legal academics and collected all survey data from DLA participants.¹⁰ I also am responsible for coding and analyzing the rich set of mixed-method empirical data that resulted from these interviews and surveys, which are presented here and in numerous anticipated future manuscripts drawing from DLA.¹¹

⁷ See, e.g., VINCENT TINTO, *LEAVING COLLEGE: RETHINKING CAUSES AND CURES OF STUDENT ATTRITION* 124 (2d ed. 1993).

⁸ Mentorship and other strong connections between faculty and students have also been shown to increase student retention. See, e.g., Meera E. Deo & Kimberly A. Griffin, *The Social Capital Benefits of Peer Mentoring in Law School*, 38 OHIO N.U. L. REV. 305 (2011).

⁹ Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503, 505 (1986).

¹⁰ I am indebted to Catherine Albiston, Linda Pololi, Harmony Rhoades, and Renee Reichl for useful conversations on the DLA study design. The Principal Investigators of the Educational Diversity Project, Walter Allen, Charles Daye, Abigail Panter, and Linda Wightman, also deserve recognition for inspiring the mixed-method design used in DLA. Any errors or methodological limitations are my own.

¹¹ A book proposal drawing from DLA data has been solicited by Stanford University Press. Immediately forthcoming DLA articles include the following: Meera E. Deo, *A Better Tenure Battle*, 31 COLUM. J. GENDER & L. (forthcoming Aug. 2015);

The DLA study examines both the personal and professional lives of law faculty members, from Assistant Professor through Dean Emeritus, exploring whether and how the race and gender of individual legal academics affect their experience as law professors. Only 7% of law professors are women of color; yet, this appalling lack of diversity has been largely ignored in the academic literature.¹² The DLA study pioneers this exploration with a methodologically rigorous investigation into the experiences of law faculty, specifically examining similarities and differences based on race and gender.

DLA findings reveal that significant ongoing discrimination haunts legal academia, with intersectional bias a clear barrier to success for many non-traditional law teachers, and especially for women of color law professors. Documenting and acknowledging both the climate of white male privilege and broader institutional bias is a first important step in eliminating it, thereby improving the learning environment for all students and the work environment for all law professors. This Article proposes detailed necessary next steps: strategies to ameliorate both overt and implicit bias through specific individual and structural changes.

In Part I, this Article begins with a brief presentation of literature on the law faculty experience and relevant frameworks of intersectionality, privilege, structural and institutional discrimination, and implicit bias. Part I also shares statistics on current legal academics, as well as an introduction to the DLA data and analytical approach. A more detailed account of the relevant literature, data collection technique, analytical approach, and initial hypotheses for the DLA study have been laid out in a separate article.¹³

Parts II and III present findings from the DLA study that indicate many ways in which racial and gender

Meera E. Deo, *Faculty Insights on Educational Diversity*, 83 FORDHAM L. REV. 3115 (2015); Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. (forthcoming June 2015).

¹² See 2008-2009 AALS Statistical Report on Law Faculty: Race and Ethnicity, AALS FAR.COM (on file with author). For many years AALS maintained basic statistical data on law faculty members by race and gender on its website, including at the following link: <http://aalsfar.com/statistics/2009dltr/race.html>. By December 2014, the relevant pages had been removed from the AALS website. In spite of numerous requests by the author of this Article and others for explanation, retrieval, and reinstatement of this data, AALS has not responded in any way and the data remains missing from the AALS website. It is therefore unavailable to those who conduct research on American law faculty. The author welcomes correspondence from anyone with additional information regarding the data or from those who have sought the data to no avail.

¹³ See Deo, *supra* note 2, at 375-77.

discrimination continue to run rampant in legal academia, both in overt and potentially actionable encounters as well as through more subtle acts and implicit bias. Part II focuses on challenging workplace interactions with fellow faculty. DLA findings make clear that racial and gender privilege create distinctly different experiences for racial minorities and women as compared to white male law faculty—even in terms of how they perceive their relationships with one another. Part III presents analytical findings on faculty-student interactions, including student confrontations of particular underrepresented faculty in the classroom and beyond. Again, race and gender color these interactions, with white women and women of color sharing experiences with students that differ significantly from how white male colleagues describe interactions with students.

In Part IV, the Article draws from the data to distill best practices and reasonable responses, suggesting strategies for addressing the specific challenges of ongoing racial and gender discrimination in legal academia. Summarizing and synthesizing these findings, the Conclusion proposes specific structural changes. The Article ends with a bullet-pointed list of strategies that administrators, other institutional leaders, and even faculty colleagues can adopt to eliminate or at least ameliorate many of the challenges the data reveal.

I. SETTING THE STAGE

To fully grasp findings from the DLA study, this Part outlines the relevant literature, presents the methodological approach of the study, and shares basic demographic statistics of current law faculty. The literature discussed includes existing studies of law faculty as well as various frameworks employed throughout the Article, including intersectionality, privilege, and implicit bias.

A. *Framing the Law Faculty Experience*

In Spring 1989, law professors Derrick Bell and Richard Delgado published an article entitled, "Minority Law Professors' Lives: The Bell-Delgado Survey."¹⁴ That article reported on an informal investigation into the professional lives of law faculty of color, with a focus on descriptive analysis of

¹⁴ Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989).

specific topic areas.¹⁵ The authors found that law faculty of color in the mid-1980s faced “discrimination in hiring and promotion, alienation among their colleagues, hostility from students, and a lack of support.”¹⁶ Though those findings were non-generalizable and non-comparative, they provide valuable insights into the professional challenges facing the few legal academics of color at the time.¹⁷ The authors of the study had dismal predictions for the future, expecting little institutional interest in even addressing these challenges.¹⁸

Perhaps unsurprisingly given their prediction, no follow up survey has taken place. In the intervening 15 years, only a handful of studies have looked into legal academia from the law faculty perspective and none have employed an intersectional lens to specifically consider how race and gender combine to affect the experiences of legal academics at various stages of their careers.¹⁹ No study has fully investigated the law faculty experience. None has looked into both the personal and professional lives of both tenured and pre-tenured faculty. No research has considered the ways in which race and gender may play a unique role in the experiences of legal academics at various stages of their careers.²⁰ Nevertheless, two recent academic projects have been instrumental in setting the stage for the DLA study.

One empirical study recently published in the *Journal of Legal Education* reports that there are “continued difficulties” facing law faculty of color and female law faculty of

¹⁵ The Bell-Delgado study findings include discussion of the following areas: Time Pressure, Academic Freedom, Relations with Colleagues, Relations with Students, Appointments, Research Support, Committee Responsibilities, Bread-and-Butter Issues & Upward Mobility, Institutional Climate, Ghettoization, and Job Satisfaction. *Id.* at 355.

¹⁶ Deo, *supra* note 2, at 369-70 (internal citations omitted); *see also* Delgado & Bell, *supra* note 14.

¹⁷ Delgado & Bell report that their relatively low response rate cautions against generalizability; they also did not include white faculty as participants. *See* Delgado & Bell, *supra* note 14, at 354, n.17 & n.19.

¹⁸ *Id.* at 369-70.

¹⁹ On the other hand, empirical studies of the law student experience have become slightly more common. *See* Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63 (2011) (discussing numerous studies of law student diversity and the law student experience generally).

²⁰ Throughout this Article the term “race” is used to signify both “race” and “ethnicity.” While race deals more generally with the social construct of one’s phenotypical or morphological presentation, and ethnicity refers more to individual or ancestral national/regional-origin, the term “race” is used throughout simply for ease of reading. For more on the differentiation between race and ethnicity, and their interplay with the law, *see* Camille Gear Rich, *Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII*, 79 N.Y.U. L. REV. 1134, 1145 (2004).

color specifically.²¹ That article focuses on tenure, reporting that a much higher percentage of female professors of color view the tenure process as unfair (35%) as compared to white males (12%).²² A negative campus climate, challenging law school culture, and implicit bias contribute to the overall “negative themes” characterizing the experience for many people of color in legal academia.²³ While that study reports on how tenured faculty remember their pre-tenure experience, untenured faculty were excluded from participation.²⁴

Another significant contribution to the literature is *Presumed Incompetent*, an anthology exploring the experience of female faculty of color in a variety of academic disciplines.²⁵ The chapters covering the law faculty experience draw from a rich narrative tradition²⁶ and reveal personal challenges as well as compelling discussions of structural impediments to success.²⁷ Many reflections on the law faculty experience by women of color note challenges navigating a hostile campus climate and suggest mechanisms for coping with ongoing institutional bias.²⁸

DLA joins both of these recent studies by drawing from a framework of intersectionality, which acknowledges the challenges facing particular individuals whose identity is bound up with the “intersection of recognized sites of oppression.”²⁹ Because of the multiple “opportunities” for oppression, it becomes clear that those who are marginalized in multiple ways have experiences that differ from not only the norm (at most law schools, this would be the middle- to upper-class, heterosexual, white male), but even from the norms attributed to particular

²¹ Barnes & Mertz, *supra* note 6, at 511-12.

²² *Id.* at 516-17.

²³ *Id.* at 522-23.

²⁴ *Id.* at 512.

²⁵ PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutierrez y Muhs, Yolanda Flores-Niemann, Carmen G. Gonzalez, & Angela P. Harris eds., 2012).

²⁶ See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1269 (1993) (“Narrative occupies a similar role in both feminist legal theory and critical race theory.”).

²⁷ See, e.g., Elvia R. Arriola, “No hay mal que por bien no venga”: A Journey to Healing as a Latina, Lesbian Law Professor, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25, at 372 (discussing her personal challenges as a woman of color at an unsupportive predominantly white institution).

²⁸ For further discussion on these themes from *Presumed Incompetent* and on the relevant literature generally, see Deo, *supra* note 2.

²⁹ RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 51-55 (2001).

minority groups.³⁰ For instance, women of color may suffer oppression based on a combination of their race and gender, which differs from individuals who are racial minorities (e.g., Black) but in the majority with regard to gender (e.g., male). Similarly, gay men of color face oppression based on both their race and their sexual orientation; their experiences tend to differ from those of both white gay men and heterosexual men of color. Yet, they still enjoy male privilege. In the traditionally white male establishment of legal academia, one would therefore expect that people of color would have unique experiences as compared to whites, that women would have different experiences from men, and that women of color—doubly marginalized by race and gender—would have different experiences still.³¹ In fact, contemporary research continues to rely “on the categories ‘men’ and ‘women’ and not—as we might have hoped—on the intersections of categories of gender, race, ethnicity, age, and sexual orientation. Sometimes a further delineation, ‘people of color,’ has been made—oftentimes, however, without distinguishing experiences of women and of men.”³²

What social scientists call “structural racism” and legal academics call “institutional racism” largely refer to the same³³

³⁰ For more on Critical Race Theory and intersectionality specifically, see generally PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (2d ed. 2000); EVELYN NAKANO GLENN, *UNEQUAL FREEDOM: HOW RACE AND GENDER SHAPED AMERICAN CITIZENSHIP AND LABOR* (2002); 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; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1990-1991).

³¹ While most scholarship drawing on a framework of intersectionality focuses on the challenges or oppression facing groups that are marginalized across multiple dimensions, there could be opportunities for benefits based on these identity characteristics as well. See, e.g., Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2152 (2013) (discussing instances where whites have capitalized on the racial identity of people of color for the social and economic benefit of whites themselves). The DLA study, on the other hand, contemplates how race and gender could create benefits even for those from marginalized groups. See Deo, *supra* note 2, at 352.

³² Judith Resnick, *A Continuous Body: Ongoing Conversations About Women and Legal Education*, 53 J. LEGAL EDUC. 564, 569 (2003). This Article, too, sometimes collapses various racial/ethnic and even gender categories to discuss experiences of “women of color,” “women,” and even “people of color” collectively. However, when done here, it is because the empirical data reveals similarities between women of color from different non-white racial/ethnic groups, women as a whole (white and non-white), or between people of color regardless of racial/ethnic background (including both men and women). Also, the emphasis on intersectionality throughout the Article is on the combination of race and gender specifically. Issues involving class, sexual orientation, age, and other identity characteristics are woven throughout though not the explicit focus of this study.

³³ Though they refer to the same system, institutional discrimination refers to bias within particular institutions embedded in society, while structural discrimination refers to the collection of these various institutions and the broader

“complex, dynamic system of conferring social benefits on some groups and imposing burdens on others that results in . . . denial of opportunity for millions of people of color.”³⁴ Sexism, homophobia, and other social ills can fit similarly within this broad framework, where we assume that those in the dominant group (e.g., males) structure aspects of society within their control to further the interests of the dominant group at the expense of those with less power (e.g., women).³⁵ Intersectionality is thus a natural lens through which to consider discrimination in legal academia, and we can think of those who exercise their power over doubly marginalized individuals as operationalizing *intersectional discrimination*.³⁶

Racism and other “-isms” refer to internally held biases or stereotypical beliefs about individuals from particular groups that are based on that identity characteristic, while discrimination refers to the exercise of power over others based on whatever “-ism” is at play.³⁷ Thus, “racial discrimination refers to unequal treatment of persons or groups on the basis of their race or ethnicity.”³⁸ In addition, a person holding racist views can exercise power over a person of color to deny her a job or refuse to sell her a car. This is racial discrimination. A person holding sexist views can exercise power over a woman by harassing her in the workplace or through sexist verbal abuse that draws from that power. This is gender discrimination.

structure that encompasses them. See Fred L. Pincus, *Discrimination Comes in Many Forms: Individual, Institutional, and Structural*, in READINGS FOR DIVERSITY AND SOCIAL JUSTICE 31 (Adams et al. eds., 2000).

³⁴ Meera E. Deo, *Two Sides of a Coin: Safe Space & Segregation in Race/Ethnic-Specific Law Student Organizations*, 42 WASH. U. J.L. & POL’Y 83, 116-20 (2013) (quoting William M. Wiecek, *Structural Racism and The Law in America Today: An Introduction*, 100 KY. L.J. 1, 5 (2011-2012)). For more on social science literature on structural racism, see EDUARDO BONILLA-SILVA, *WHITE SUPREMACY & RACISM IN THE POST-CIVIL RIGHTS ERA* 11 (2001); MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 79 (2d ed. 1994) (asserting that “the major institutions and social relationships of U.S. society—law, political organization, economic relationships, religion, cultural life, residential patterns etc.—have been structured from the beginning by the racial order”); Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 469 (1997). Legal scholar Ian Haney López has also argued similar sentiments using the term “institutional racism.” See, e.g., Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (2000).

³⁵ See generally DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE* (2014).

³⁶ Some have called this “complex’ bias.” See, e.g., Minna J. Kotkin, *Diversity and Discrimination: A Look at Complex Bias*, 50 WM. & MARY L. REV. 1439 (2009).

³⁷ Devah Pager & Hana Shepherd, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 ANN. REV. SOC. 181, 182 (2008).

³⁸ *Id.*

The intersectional discrimination discussed in this Article refers to the ways in which institutional policies and practices, as well as institutional leaders, exercise not only white privilege to discriminate against people of color, or male privilege to discriminate against women, but also the combination of white male privilege to discriminate against women of color.³⁹

In fact, privilege itself is another framework that must be considered when examining bias in legal academia. Privilege is "the systemic conferral of benefit and advantage [based on] affiliation, conscious or not and chosen or not, to the dominant side of a power system."⁴⁰ Privilege can be dissected into three main points. First, privilege provides systemic—ongoing and structural—advantages rather than simply one-time individual benefits. Second, privilege is often "largely invisible to those who reap its benefits."⁴¹ Those aware of their privilege do not necessarily choose to accept it; yet, it cannot easily be rejected. Even individuals who are disadvantaged or lack privilege tend not to challenge the status quo, as many believe that the existing structure is normal, unavoidable, and based on merit.⁴² Third, the benefits associated with privilege are based on external association with the power structure. In other words, when external actors identify an individual as affiliated with a group considered powerful within a given context, that individual receives the associated privileges.

For various categories, one can easily determine which groups are powerful and which are not; individuals associated with powerful groups are privileged, while the others are not accorded advantage. For instance, when considering socio-economic status, wealthy people have more power than poor; those believed to be wealthy and associated as such will therefore have greater privilege. In the race context, whites have more power and therefore more privilege than those identified as Black, Latino, Asian American, Native American,

³⁹ Much of the past scholarship on intersectionality has focused on who is excluded, i.e., "when African American women claim race discrimination, their experience is measured against that of sex-privileged (that is, male) African Americans; when African American women claim gender discrimination, their experience is measured against that of race-privileged (that is, white) women." Kotkin, *supra* note 36, at 1482 (citing Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, *supra* note 30, at 140).

⁴⁰ STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 29 (1996).

⁴¹ Deo, *supra* note 34, at 114 (discussing WILDMAN, *supra* note 40, at 28).

⁴² WILDMAN, *supra* note 40, at 29.

or as belonging to some other racial/ethnic group.⁴³ Highly-educated people have greater power than those with low levels of education, and receive privilege based on their elite educational status. Men, as a group, have more power, and therefore more privilege, than women. Heterosexuals have more power than those in the LGBTQ community, resulting in those identified as “straight” receiving privilege based on their sexual orientation.

To be sure, not all discrimination is conscious or purposeful. Perhaps the most pervasive and destructive type of discrimination is based on implicit bias. Implicit bias includes thoughts and behaviors that “affect social judgments but operate without conscious awareness or conscious control.”⁴⁴ In fact, “the term ‘implicit’ emphasizes our unawareness of having a particular thought or feeling,” while, in contrast, “‘explicit’ emphasizes awareness of having a thought or feeling.”⁴⁵ Because it is based on subconscious thought, “implicit bias [often] coexists with egalitarian beliefs and the denial of personal prejudice.”⁴⁶ Thus, these “attitudes, beliefs, or thoughts [are ones] that people hold but may explicitly reject” were they to think about them explicitly.⁴⁷ In other words, though we may think or feel something impulsively based on implicit bias, and even act on that bias exercising discrimination, it is based on subconscious feelings that “we might even reject ...as inaccurate or inappropriate upon self-reflection.”⁴⁸

Implicit bias is especially dangerous because it infects even those who believe themselves to be egalitarian. Because it is not based on conscious thought but operates “automatically and outside of rational awareness,”⁴⁹ implicit bias “leak[s] into everyday behaviors such as whom we befriend, whose work we value, and whom we favor—notwithstanding our obliviousness

⁴³ Of course, there is relative privilege too, where certain groups may not be at the pinnacle of the hierarchical structure yet still enjoy some privilege. They may also be privileged with regard to a particular status (e.g., class) while not privileged in another (e.g., gender). See Kathleen J. Fitzgerald, *White Privilege*, in *ENCYCLOPEDIA OF RACE, ETHNICITY, AND SOCIETY* 1404 (Richard T. Schaefer ed., 2008) (“[P]eople can be oppressors within one status hierarchy, while in others they may be disadvantaged. And more than likely, most people are both at some time or another . . .”).

⁴⁴ Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 *UCLA L. REV.* 465, 467 (2010).

⁴⁵ *Id.* at 469.

⁴⁶ Victor Quintanilla, *Critical Race Empiricism: A New Means to Measure Civil Procedure*, 3 *U.C. IRVINE L. REV.* 187, 198 (2013).

⁴⁷ Gregory S. Parks et al., *Implicit Race Bias in Tort Jury Decision Making* (forthcoming 2015) (on file with the author).

⁴⁸ Kang & Lane, *supra* note 44, at 469.

⁴⁹ Parks et al., *supra* note 47.

to any such influence.”⁵⁰ It exists in our everyday lives, our workplaces, our justice system, and other institutions—including legal academia.⁵¹

Combining the framework of intersectionality, privilege, and implicit bias, we see the ways in which those who lack privilege along multiple axes face additional hurdles than even those who lack privilege along just one axis. A “minority within a minority” is doubly or even triply disadvantaged. As an example, “Black women are sometimes excluded from feminist theory and antiracist policy discourse because both are predicated on a discrete set of experiences that often does not accurately reflect the interaction of race and gender.”⁵² Though Black women are Black, leadership within their racial community may not fully appreciate their experience as women and instead privilege the male experience; similarly, though Black women are women, the feminist movement may not fully understand their experience as Black and instead privilege the white experience. The Black woman’s relative outsider status with regard to each group may not be based on purposeful discrimination from other group members, but instead result from implicit bias. The Black woman is nevertheless excluded.

Legal institutions, including law schools, are not exempt from racial and gender privilege and implicit bias. In fact, as institutions of great power and privilege, law schools are an especially interesting site for a study investigating intersectional discrimination. In one sense, there is nothing unique about law schools, nothing that suggests that there would be greater racist or sexist incidents at these particular institutions over others. Law schools have historically been elite, white, male institutions, though this is true of many American institutions and certainly of most American institutions of higher learning.⁵³ Yet, since intersectional discrimination parallels institutional racism, it is similarly “all-pervasive, infecting the very institutions that support communities, civic bodies, and society broadly.”⁵⁴ Thus, law schools are simply one set of a number of institutions that are reflective of society as a whole, including

⁵⁰ Kang & Lane, *supra* note 44, at 467-68.

⁵¹ For more on implicit bias in courts, see Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012).

⁵² See Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politic*, *supra* note 30, at 3.

⁵³ BONILLA-SILVA, *supra* note 34, at 97-98; OMI & WINANT, *supra* note 34, at 79; Meera E. Deo, *Ebbs & Flows: The Courts in Racial Context*, 8 RUTGERS RACE & L. REV. 167 (2007).

⁵⁴ Deo, *supra* note 34, at 119.

even subtle intersectional discrimination that many women of color face on a daily basis in society at large.⁵⁵ These “microaggressions” can be defined as “subtle verbal and non-verbal insults directed toward non-Whites, often done automatically or unconsciously.”⁵⁶ Because microaggressions are often “layered insults based on one’s race, gender, class, sexuality, language, immigration status, phenotype, accent, or surname,” they specifically anticipate intersectionality and draw from a framework of intersectional discrimination.⁵⁷

As social institutions, law schools likely suffer from many of the same social ills of society as a whole. Still, one might argue that law schools would have less formal discrimination (i.e., that which is clearly illegal) than non-legal institutions, since they are the workplace of many people well versed in the law. Thus, to the extent that we can generalize findings discussed in this Article to other educational institutions, or even to corporate and other non-legal workplace settings, conclusions of bias presented here may be underinclusive of the intersectional discrimination occurring on campuses and in other work environments without numerous attorneys in positions of power.

Yet, the actual effects of ongoing intersectional bias in legal academia may be even more significant than in other environments, as the high-status position of “law professor” should be one that rewards merit and rejects bias, providing for upward mobility and meaningful social change for the families and communities connected with individual law professors. In a sense, if things are unfair, inequitable, or biased in legal academia, what hope do we have for other professions, academic institutions, workplaces, and campuses? If this avenue does not truly provide opportunities for advancement, there is little hope that other positions can create those changes. Improving the environment in law schools can thus not only enrich law teaching, legal education, and the legal profession, but also serve as an example to other professional and educational environments for how to contribute to social change generally.

⁵⁵ In fact, since they are “microcosms of larger society, schools ‘are often the arenas in which the schisms and conflicting values of the larger society are played out and become crystallized.’” Meera E. Deo, *Separate, Unequal, and Seeking Support*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 9, 19 (2012) (quoting RUTH SIDEL, *BATTLING BIAS: THE STRUGGLE FOR IDENTITY AND COMMUNITY ON COLLEGE CAMPUSES* 8 (1994)).

⁵⁶ Daniel Solórzano et al., *Keeping Race in Place: Racial Microaggressions and Campus Racial Climate at the University of California, Berkeley*, 23 CHICANO/A-LATINO/A L. REV. 15, 17 (2002).

⁵⁷ *Id.*

B. Data Collection and Methodological Approach

The DLA study is the first comprehensive empirical study of law faculty that investigates the personal and professional lives of legal academics with an intersectional (race/gender) lens.⁵⁸ The author of this Article is also the Principal Investigator of the DLA study. I am wholly responsible for study design, from inception through final dissemination of books and articles. I personally designed the survey instrument that participants completed and the interview questions that they answered. I also maintain responsibility for all coding and analysis of the quantitative and qualitative data, including creation of a coding schema, maintenance of a codebook, and the actual coding and analysis of the transcript data from DLA interviews and surveys.

Methodologically, DLA draws from empirical sociological methods to incorporate both survey and in-depth interview data from 93 legal academics employed in tenured or tenure-track positions at ABA-accredited and AALS-member schools during the 2013 calendar year.⁵⁹ Data collection followed a target sampling technique. Target sampling is a well-established technique for data collection in statistics, sociology, public health, and other arenas; it is especially valuable for identifying and securing participation in empirical

⁵⁸ For more discussion on the methods employed in the DLA study, see Deo, *supra* note 2.

⁵⁹ The decision to include participants from only ABA-accredited and AALS-member schools follows the tradition started by other established scholars who have done so to ensure a high and uniform standard of all participants. See Deo, *supra* note 2, at 375 n.154 (discussing correspondence with Herma Hill Kay on the decision of many researchers to follow this selection criterion). Similarly, including only tenured or tenure-track faculty and excluding librarians, clinicians, adjunct professors, and legal writing instructors (even those who are tenured/tenure-track) parallels other published studies in this arena. See Deo, *supra* note 2, at 377 n.167 (citing Herma Hill Kay, *U.C.'s Women Law Faculty*, 36 U.C. DAVIS L.REV. 331 (2003) and Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 803 (1988)); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 206 (1997); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, And What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 871-72 (1984) (counting only tenure-track faculty, defined as "professor, associate professor, or assistant professor, unmodified by any other term such as adjunct, clinical, visiting, or emeritus" and noting that "[l]ibrarians, although usually tenure-track, were excluded because they constitute a distinct career line"). In addition, historically Black institutions were not included in the sample, as faculty from those institutions also tend to have significantly different experiences than those at predominantly white schools. See Douglas A. Guiffreda, *Othermothering as a Framework for Understanding African American Students' Definitions of Student-Centered Faculty*, 76 J. HIGHER EDUC. 701, 701-03 (2005).

research from vulnerable or hard-to-reach populations.⁶⁰ First, a *seed group* of faculty members was selected to participate based largely on their diversity across a number of dimensions, including race/ethnicity, gender, institutional ranking, geographic region of employment, tenure status, and employment title/position.⁶¹ Every participant completed a survey, which asked about interactions with colleagues and students, sources of emotional and professional support, future career aspirations, and a range of attitudinal and experiential issues. A one-on-one interview followed, where research subjects answered more nuanced questions regarding professional interactions, entry to the legal academy, mentoring relationships, work/life balance, and sources of support.

The penultimate question on the survey asked each participant to nominate others to join the study; new participants were then carefully selected from this pool of nominated faculty to ensure not only that all eligibility characteristics were satisfied, but also to maintain the robust diversity of the original sample.⁶² Thus, as the potential sample grew throughout data collection based on nominations of every new participant, selections and corrections could be made to ensure the generalizability of the final sample. This painstaking nomination-plus-selection process yielded the 93 participants in the study, who were selected to represent the full range of diversity in legal academia. This methodological approach is the most viable and sound process for this type of study, as there is no central database of women of color law faculty

⁶⁰ See Deo, *supra* note 2, at 379-80 (discussing research employing this methodological technique by the following renowned scholars: Katherine Browne, *Snowball Sampling: Using Social Networks to Research Non-heterosexual Women*, 8 INT'L J. SOC. RES. METHODOLOGY 47 (2005); Leo A. Goodman, *Snowball Sampling*, 32 ANN. MATH. STAT. 148 (1961); D.D. Heckathorn, *Respondent-Driven Sampling: A New Approach to the Study of Hidden Populations*, 44 SOC. PROBLEMS 174, 175 (1997); J.K. Watters & P. Biernacki, *Targeted Sampling: Options and Considerations for the Study of Hidden Populations*, 36 SOC. PROBLEMS 416, 420 (1989)).

⁶¹ The original, or "seed," participants were purposefully selected to be diverse with regard to these characteristics and these domains were formally tracked while selecting additional participants from among those nominated. In addition, age, sexual orientation, and disability status were loosely tracked to ensure representation in the sample.

⁶² While one critique of snowball sampling is that the sample may not be truly representative, target sampling seeks to avoid bias by painstakingly tracking numerous domains in order to ensure representation in the final sample. This methodological approach is most commonly used in hidden or vulnerable populations that are unlikely to respond to "cold" or uninvited contact from a researcher. Though critics may still believe the final sample is not as representative as a truly random sample, the target snowball sampling technique was utilized in DLA because it was the best way to ensure participation from the "vulnerable" population of women of color legal academics. For more on the sampling technique and its use in DLA, see Deo, *supra* note 2, at 379-82.

members.⁶³ All participants were assigned pseudonyms; these are used in the findings section in lieu of actual names to preserve anonymity.

The diverse participants in the DLA study thus represent various faculty positions, from Assistant Professor to Dean Emeritus, ranging from highly selective to “access” schools, in every region of the country. The sample also has robust gender and racial/ethnic representation, with participation from both women and men who self-identify as White, African American, Latino, Asian/Pacific Islander, Native American, Middle Eastern, and Multiracial.⁶⁴ Because of the intersectional (race/gender) focus of the study, women of color were oversampled and represent the *core sample*, comprising 63 of the 93 participants. Comparative samples of white men, white women, and men of color are included to add perspective and place the intersectional experience in context. Detailed race and gender statistics are provided in Table 1.

⁶³ While there is an AALS Directory of Law Teachers that allows law faculty of color to “opt in,” this would be problematic as an original pool of possible participants because it is likely underinclusive (not all law faculty of color opt in) in potentially meaningful ways (those who opt out may have significant differences from those who opt in, which would not be reflected in a pool drawn only from the Directory). In addition, the names listed there are not disaggregated by gender or ethnicity; thus, it is not comprehensive or particularly useful for an intersectional study of how race/gender affect the law faculty experience. *Directory of Law Teachers*, ASS’N OF AM. L. SCHS., www.aals.org/about/publications/directory-law-teachers/ (last visited Feb. 26, 2015).

⁶⁴ Racial/ethnic categorization is always challenging, in part because it is a social construction. See, e.g., Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 3 (1994). DLA uses self-identification of participants in both the survey and interview. The terms “African American” and “Black” are used interchangeably throughout the Article to refer to those who self-identified using those terms. Participants who identified as “API,” “Asian,” “Asian American,” or within one of the pan-ethnic Asian-American identities are identified as “Asian American,” while those who self-identified as “Latino” or “Hispanic” are referred to as “Latino.” Those who identified only as “white” are identified as such in the Article. Multiracial participants are those who self-identified as having two or more racial/ethnic backgrounds.

TABLE 1. DLA PARTICIPANTS, BY RACE & GENDER, DLA 2013
(N=93)

	Male	Female	TOTAL
Black	4 (4.3%)	21 (22.6%)	25 (26.9%)
Asian/Pacific Islander	3 (3.2%)	15 (16.1%)	18 (19.4%)
Latino	2 (2.2%)	13 (14.0%)	15 (16.1%)
Native American	1 (1.0%)	5 (5.4%)	6 (6.5%)
Middle Eastern	1 (1.0%)	2 (2.25)	3 (4.4%)
Multiracial	1 (1.0%)	7 (7.5%)	8 (8.6%)
White	7 (7.5%)	11 (11.8%)	18 (19.4%)
TOTAL	19	74	93

C. Demographic Details of Current Law Faculty

Current statistics on law faculty guided the DLA selection process with regard to race and gender. Until 2009, the Association of American Law Schools (AALS) released basic demographic data on American law faculty, including race and gender statistics (See Table 2; also presented visually as Chart 1).⁶⁵ While these are not completely up to date, no more-recent disaggregated statistics were available to guide the DLA study at its inception.⁶⁶ It is especially unfortunate that current statistics have not been available because legal academia is currently in a state of flux, with severe admissions declines,⁶⁷ significant

⁶⁵ See 2008-2009 AALS Statistical Report on Law Faculty: Race and Ethnicity, *supra* note 12.

⁶⁶ While the American Bar Association (ABA) does release current statistics on lawyers by profession (including statistics on legal academics) it did not until 2015 disaggregate data by race/ethnicity and gender. Thus, at the inception of the DLA study, it was impossible to use ABA data to determine the number or percentages of women of color law faculty. For recent data, see *Total Female Staff & Faculty Members 2012-2013*, AM. BAR ASS'N., (2012-2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2012_2013_faculty_by_gender_ethnicity.authcheckdam.pdf.

⁶⁷ See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 162 (2012); Luz E. Herrera, *Educating Main Street Lawyers*, 63 J. LEGAL EDUC. 189, 209 (2013); Philip G.

curricular changes expected and employed,⁶⁸ and budgetary constrictions affecting faculty hiring and firing.⁶⁹ Though faculty diversity may actually draw more prospective students in and keep current students in school, women of color, men of color, and white women tend to occupy the least secure positions on most law school campuses. Thus, the statistics on current law faculty do not fully reflect today's challenges. Still, with no superior data available, selection loosely tracked the AALS statistics with an oversampling of women of color to capture their full experience based on their importance to the intersectional lens employed, and additional oversampling of particular groups as necessary to include a robust set of perspectives.⁷⁰

If one simply considers the numbers, significant gender and racial disparities remain in legal academia, with only 4,091 women legal academics (37%) and only 1,632 people of color (15%) out of 10,965 total. When considering the intersection of race and gender, the numeric inequalities are even more pronounced. Almost every racial/ethnic group has slightly more men than women, though the ratio of white men (5,090) to white women (2,741) is almost 2:1. Consolidating all women of color into one group, we see that there are only 772 women of color law faculty members, out of almost 11,000 total legal academics; thus, women of color represent just 7% of all law professors.⁷¹ Of these 772 women of color law faculty members, African American women comprise the highest percentage, followed by Latinas and Asian/Pacific Islander women (APIs). Multiracial women, Native American women, and those from other non-white racial groups are only marginally represented in legal academia.

Schrag, *Failing Law Schools—Brian Tamanaha's Misguided Missile*, 26 GEO. J. LEGAL ETHICS 387, 421 (2013).

⁶⁸ California has been a front-runner in this arena, with new requirements that law schools incorporate skills-based learning into the curriculum and that new attorneys complete mandatory pro bono work within a year of graduation. The California Bar Journal has been carefully following these developments. See, e.g., Laura Ernde, *Panel Outlines Plan to Amend Rules for Attorney Training*, CAL. BAR J. (Jan. 2014), available at <http://calbarjournal.com/January2014/TopHeadlines/TH4.aspx>.

⁶⁹ See, e.g., Jones & Smith, *supra* note 4.

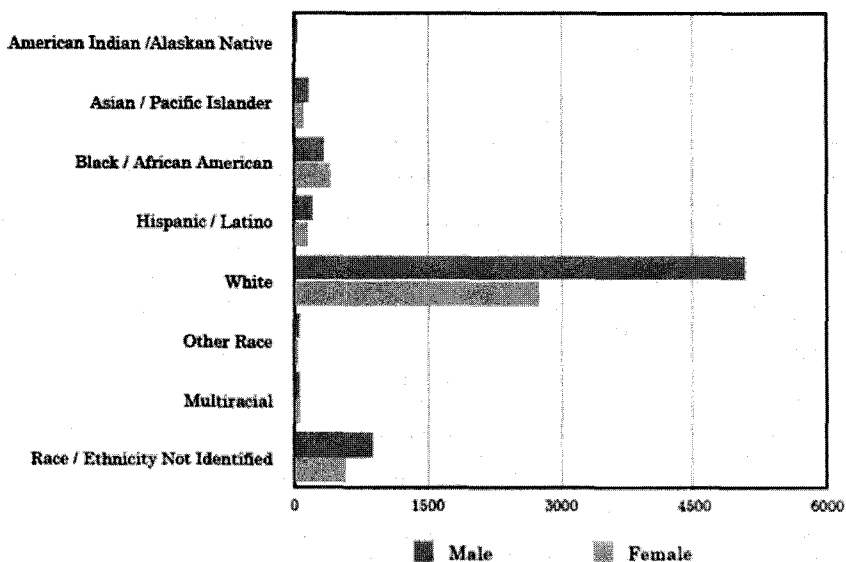
⁷⁰ For example, Native American women were especially oversampled; otherwise, as they comprise only .5% of legal academics, this population would have been empirically excluded from the sample.

⁷¹ The numbers are likely much smaller when we consider tenured and tenure-track women, since we know that "as the status of a job within a law faculty goes down, the percentage of women holding that position goes up; women 'disproportionately fill non-tenure-track positions.'" Resnick, *supra* note 32, at 568 (quoting Deborah Merritt, *Are Women Stuck on the Academic Ladder? An Empirical Perspective*, 10 UCLA WOMEN'S L.J. 249, 250 (2000)).

TABLE 2. LAW FACULTY, BY RACE & GENDER, AALS 2009
(N=10,965)

	Male	Female	TOTAL
American Indian/ Alaskan Native	30 (0.4%)	21 (0.5%)	51 (0.5%)
Asian/Pacific Islander	158 (2.3%)	112 (2.7%)	270 (2.5%)
Black/ African American	344 (5.0%)	409 (10.0%)	753 (6.9%)
Hispanic/Latino	199 (2.9%)	138 (3.4%)	337 (3.1%)
White	5090 (74.6%)	2741 (67.0%)	7831 (71.4%)
Other Race	67 (1.0%)	34 (0.8%)	101 (0.9%)
Multiracial	62 (0.9%)	58 (1.4%)	120 (1.1%)
Race/ Ethnicity Not Identified	869 (12.7%)	578 (14.1%)	1502 (13.7%)
TOTAL	6819 (100.0%)	4091 (100.0%)	10965 (100.0%)

GRAPH 1. LAW FACULTY BY RACE & GENDER, AALS 2009
(N=10,965)



Both hiring and retention invoke significant challenges within legal academia. The 2005 AALS Committee on the Recruitment and Retention of Minority Law Teachers reported not only that the “hiring gap between white and non-white faculty actually *increased* between 1990 and 1997,”⁷² but that there is a “widening ‘tenure gap’ between white faculty members and their colleagues of color,” with many faculty of color failing to achieve tenure within the time expected.⁷³ Understanding the qualitative experiences of law faculty, particularly women of color law faculty, is especially important since increasing positive encounters and interactions could yield greater retention rates for these faculty members and help diversify legal academia overall.

The primary purpose of this Article is to present and discuss various findings from the DLA study focused on relationships with faculty colleagues and interactions with students inside and outside of the classroom. Part II presents findings focused on these concerns, with regard to fellow faculty. Part III focuses on challenges from students in the classroom and elsewhere on campus. Part IV presents findings focused on solutions, with broader proposals discussed in the Conclusion. Though some of the survey data are presented in Tables, the DLA qualitative study findings are the principal focus of this Article.⁷⁴ Thus, the quantitative data are presented at the outset in order to frame the qualitative data that follows, which is the heart of the study and this Article.

⁷² Deo, *supra* note 2 (quoting AALS Committee Commentary, *The Racial Gap in the Promotion to Tenure of Law Professors: Report of the Committee on the Recruitment and Retention of Minority Law Teachers* 3 (2005) (“[b]oth the absolute number as well as the proportion of minority law professors hired decreased in 1996-97 from 1990-91.”) (on file with author)). For almost a decade, AALS publicized this report on their website at the following site: <http://www.aals.org/documents/racialgap.pdf>. Numerous recent articles continue to cite to it there. See, e.g., Angela Onwuachi-Willig, *Complimentary Discrimination and Complementary Discrimination in Faculty Hiring*, 87 WASH. U. L. REV. 763, 770 n.20 (2010); Russell G. Pearce et al., *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407, 2410 n.14 (2015); Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, FED. LAW, July 2014, at 49, 57 n.5, available at http://www.upcolorado.com/excerpts/PresumedIncompetent_FederalLawyer.pdf. Just as with removal of the statistical data on law faculty members, no explanation has been provided as to why this Report was removed or when it might be reinstated on the website. Its removal limits access to information regarding this important and controversial topic and prevents widespread dissemination of the valuable suggestions proposed in the Report.

⁷³ Deo, *supra* note 2.

⁷⁴ The samples of white men, white women, and men of color are especially small and therefore less reliable; they should be used primarily as points of contrast to the data on women of color law faculty.

II. CHALLENGING RELATIONSHIPS WITH COLLEAGUES

"If we had a meeting and we needed a note taker there would be the turning of all eyes to whichever female was in the room and she would become the note taker." -Abigail

When aggregating DLA data on collegiality, it becomes clear that law faculty members report good relationships with colleagues overall, and frequent interactions with colleagues of different racial backgrounds. However, there is marked racial variation with regard to how faculty report on interactions with their colleagues and in terms of who is included in close-knit groups. For instance, white professors have the best relationships with other white professors, as 73% of white women and 75% of white men report "very friendly" interactions with their fellow white faculty (See Table 3). Although white faculty members report high levels of contact with colleagues from all racial backgrounds, the quality of those relationships varies depending on whose perspective we consider (See Table 4).

If we compare interactions between women of color and white faculty, the race and gender differences become clearer. Only 52% of Black women and 42% of Latinas in the sample report "very friendly" interactions with white faculty colleagues at their institutions. A full 24% of Black women law professors report "distant" relationships with white faculty. Interestingly, white faculty members do not see relationships with their female colleagues of color the same way. Instead, white faculty believe their relationships with faculty of color are much better than faculty of color view those same relationships. For example, Table 5 shows that in spite of one-quarter (24%) of Black female faculty characterizing their relationship with white faculty as "distant," no white male faculty and only one white female characterize relationships with African American colleagues similarly.⁷⁵

⁷⁵ Though not presented analytically, it is highly unlikely that this difference in perception is due to Black male faculty being especially friendly with white faculty. Of the four Black men in the DLA sample, one reports "very friendly" interactions with white colleagues and the other three characterize them as "sociable." This is not a statistically reliable sample size, but is offered here as merely an example.

TABLE 3. QUALITY OF INTERACTIONS WITH WHITE FACULTY, BY RACE & GENDER, DLA 2013 (N=92)

	Very Friendly	Sociable	Distant	Hostile	TOTAL
Black Females	11 (52.4%)	5 (23.8%)	5 (23.8%)	0 (0.0%)	21
Asian/ Pacific Islander Females	9 (60.0%)	5 (33.3%)	1 (6.7%)	0 (0.0%)	15
Latinas	5 (41.7%)	6 (50.0%)	1 (8.3%)	0 (0.0%)	12
Native American Females	3 (60.0%)	1 (20.0%)	0 (0.0%)	1 (20.0%)	5
Middle Eastern Females	0 (0.0%)	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Multi- racial Females	4 (57.1%)	3 (42.9%)	0 (0.0%)	0 (0.0%)	7
White Males	6 (75.0%)	2 (25.0%)	0 (0.0%)	0 (0.0%)	8
White Females	8 (72.7%)	3 (27.3%)	0 (0.0%)	0 (0.0%)	11
Men of Color	6 (54.5%)	4 (36.4%)	1 (9.1%)	0 (0.0%)	11
TOTAL	52	31	8	1	92

TABLE 4. FREQUENCY OF INTERACTIONS WITH WHITE FACULTY,
BY RACE & GENDER, DLA 2013 (N=92)

	A Lot	Some	Not Much	TOTAL
Black Females	16 (76.2%)	4 (19.1%)	1 (4.7%)	21
Asian/ Pacific Islander Females	13 (86.7%)	2 (13.3%)	0 (0.0%)	15
Latinas	10 (83.3%)	2 (16.7%)	0 (0.0%)	12
Native American Females	4 (80.0%)	0 (0.0%)	1 (20.0%)	5
Middle Eastern Females	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Multiracial Females	6 (85.7%)	1 (14.3%)	0 (0.0%)	7
White Males	7 (87.5%)	1 (12.5%)	0 (0.0%)	8
White Females	11 (100.0%)	0 (0.0%)	0 (0.0%)	11
Men of Color	10 (90.9%)	1 (9.1%)	0 (0.0%)	11
TOTAL	79	11	2	92

TABLE 5. QUALITY OF INTERACTIONS WITH BLACK FACULTY, BY RACE & GENDER, DLA 2013 (N=91)

	Very Friendly	Sociable	Distant	Hostile	N/A	TOTAL
Black Females	14 (66.7%)	6 (28.6%)	1 (4.8%)	0 (0.0%)	0 (0.0%)	21
Asian/ Pacific Islander Females	12 (80.0%)	3 (20.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	15
Latinas	7 (58.3%)	5 (41.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	12
Native American Females	2 (40.0%)	1 (20.0%)	2 (40.0%)	0 (0.0%)	0 (0.0%)	5
Middle Eastern Females	1 (50.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (50.0%)	2
Multi- racial Females	6 (85.7%)	0 (0.0%)	1 (14.3%)	0 (0.0%)	0 (0.0%)	7
White Males	4 (57.1%)	3 (42.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	7
White Females	7 (63.6%)	3 (27.3%)	1 (9.1%)	0 (0.0%)	0 (0.0%)	11
Men of Color	9 (81.8%)	2 (18.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	11
TOTAL	62	23	5	0	1	91

While a number of faculty report positive interactions with colleagues, the qualitative data make clear that many female faculty of color see “cordial” relationships with white faculty as simply a mask of civility hiding friction; women of color law faculty are close primarily with other female faculty of color. Existing literature indicates that women of color often lack a sense of belonging when hired to teach at predominantly white and male-

normative law school campuses.⁷⁶ They often feel unwelcome in elite spaces that have traditionally excluded them, especially if no meaningful efforts are made to include them.⁷⁷ While the pleasant interactions may outnumber the hostile, the negative encounters tend to color the environment overall. In addition, many positive relationships are between women of color faculty, who enjoy especially friendly relations with others who share similar backgrounds, professional positions, or life experiences. Unfortunately, gender discrimination is especially salient from the data, both with regard to the invisibility and silencing of women as well as through blatant sexual harassment.⁷⁸

A. *The Mask of Collegiality*

"The first semester everyone was very welcoming [but] it was just kind of like I was their guest [in their] home. I was new and exotic and different." -Laila

Even in the qualitative data, most faculty report collegial interactions with colleagues. A Black female named Corinne notes that her law school is "a very civil place" where "we can really disagree," one day, "but then we can go out to lunch and hang out in someone's office the next day." Similarly, a white female named Abigail makes clear that her faculty "isn't full of cliques," but rather they "genuinely like each other and get together and are happy to see each other."

Corinne and Abigail are lucky to be so comfortable on their campuses. Unfortunately, many law schools are highly factionalized with different groups not getting along and often in direct opposition to one another. Because there are often blocs within law faculties that have very few women of color, these underrepresented individuals are frequently lost in the shuffle, becoming virtually invisible and silenced. For instance, a number of faculty agree with how Aisha, an Asian American law professor, describes her institution: "[T]he faculty at the law school is very polarized." Valeria, a Latina, sees something

⁷⁶ Research regarding women in legal academia include the many articles cited *supra* Part I.A. and Resnick, *supra* note 32. However, most of these studies do not focus on race in addition to gender, and all could certainly be updated to reflect current trends and patterns from the past decade or more.

⁷⁷ See, e.g., Angel, *supra* note 59.

⁷⁸ It is beyond the scope of this Article to explore in detail whether individual female faculty have viable sexual harassment claims. Nevertheless, characterizations of their work environments and descriptions of the incidents women have endured seem to rise to the level of sexual harassment, as defined by the law and in the literature. See, e.g., Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2084-90 (2003) (providing a primer on workplace sexual harassment jurisprudence).

similar at her school and expects it is the norm, noting, "I think with every law school there are different factions." In response to these tensions, Laura, a Native American, suggests that new law faculty "just avoid anybody who has negative karma [because] it's not worth the time or effort to engage in a pointless discussion." In this way, Laura disengages from her professional environment, determining that engaging is not worth the potential costs. Interestingly, the disengagement of underrepresented and disempowered law faculty parallels the alienation of law students of color, who face similar challenges during the three years of their law school careers.⁷⁹

1. On Being a Guest

Most female faculty of color are reticent at best in their interactions with colleagues. For instance, a Black woman named Michelle says that at her law school she is "cordial with everybody," though she "purposely, consciously" maintains only "very professional relationship[s]," rather than close ones. Similarly, an Asian American named Elaine, states, "There are a lot of people I'm friendly with, but I don't have close friends on the faculty." In fact, this hesitancy at becoming close to fellow faculty comes from a general distrust that many white female faculty and especially female faculty of color have toward their colleagues overall, especially their white male colleagues.

Much of this distrust and distance comes from women of color recognizing that some of their colleagues may be focused on their own best interests, rather than looking out for others. Some have witnessed white male colleagues actively working against the interests of women of color faculty. This goes against the sense of community that many faculty seek, and which they often find with others whom they see as allies or who share similar backgrounds both within and outside of their institutions.⁸⁰

One of these frequently witnessed occurrences involves the negative treatment of junior women of color faculty, in comparison to the positive affirmations given to junior white male colleagues. For instance, an Asian American woman named Cindy recalls that when she first made a lateral move to her current institution, she "was treated like the dumb one, sort of [like an] 'affirmative action hire' in the worst sense of

⁷⁹ See, e.g., Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT'L BLACK L.J. 71 (2010).

⁸⁰ For more on community-building within institutions as well as with those outside of the institution, see Meera E. Deo, *Mentors, Sponsors, and Allies in Legal Academia* (work in progress) (on file with the author).

the word," while a white male colleague who started at the same time was treated like he "was the 'real' [hire]." That open display of favoritism affected her confidence initially; even she "felt like he was the real deal and I'm not," though "as it turned out it was kind of opposite," with Cindy earning tenure and becoming widely respected while her white male colleague did not achieve similar success.

Leanne, an Asian American law faculty member, notes the significant difference in "the support given particularly to young male professors" as compared to other junior scholars; this leads many of the junior white women and women of color to distrust their more senior colleagues who display this blatant favoritism. She provides a poignant example of a white male junior colleague "who went up early for promotion and tenure" with the support of many senior colleagues, while the two women who were hired the same year as he was were discouraged from applying early even though, when compared to "the golden guy," they published at roughly equivalent rates. Leanne was similarly discouraged from applying for promotion by her Associate Dean for Faculty Development, the person tasked with helping faculty grow and advance. He told Leanne initially that she "needed to wait another year or two" before applying, although she feels "it's ridiculous how long I've been waiting." Now, that same senior administrator "keeps saying, 'Oh you're golden. You're totally a cinch. Don't worry about it.' And I'm like, 'Really? Because you worked really hard to tell me not to go up. You explicitly said I should not go up.'" Thus, in Leanne's experience, even the senior administrator tasked with advancing the careers of the faculty cannot be fully trusted when it comes to the professional development of junior female faculty of color.

In fact, the theme of receiving poor advice from senior colleagues is another common one throughout the DLA data. A Black senior scholar named Brianna warns her junior female faculty colleagues against following the counsel they receive from senior colleagues, especially when it does not seem logical or consistent with what they say to others. She notes specifically that she tells young female faculty of color, "Don't listen to any stupid advice about people telling you that you can take it easy [your first year]. You can't take it easy."⁸¹

⁸¹ In fact, when asked to provide advice for junior scholars, most senior scholars of color in the DLA study suggest that publishing prolifically from their very first year is a requirement especially for female faculty of color, fully expecting they may be judged with harsher standards and against higher expectations than white junior faculty.

Martha, a Latina, also makes clear the rationale for her arms-length relationships with faculty, stating that she tries “to keep things cordial and superficial,” but goes no further because “I have a hard time really trusting other faculty.” Martha has seen first-hand how some white faculty members utilize a mask of collegiality to hide the true negativity they feel toward faculty of color. In Martha’s many years of experience, her colleagues will not “tell you to your face that they don’t agree with what you said at the faculty meeting, or [say,] ‘I think your perspective on this is wrong or harsh.’” Instead of engaging in honest and face-to-face conversation about why they disagree, Martha notes how “they go around your back and say that to each other. And then label you as mean [or] unkind.” This labeling, and the “gossip and bad talk behind your back undermines your voice in a very significant way.” Now, she cannot simply speak her mind and engage in fruitful conversation with her colleagues about particular issues, topics, ideas, or suggestions she may have; instead, she has to “corral the right people at the table, get them to say the right things, get them to agree” in advance and pledge to back her up, or her voice will be ignored. She believes that her past attempts at “just saying what I think is the truth or what needs to be said” has led to her being “undercut [by] people who talk about you behind your back.” After experiencing this environment for years, Martha protects herself by either disengaging or strategically ensuring that she has the requisite support in advance.

Many women of color have similar experiences with colleagues, leading to the current distrust that characterizes faculty relationships. Alicia, a Latina, also says that it is common at her institution for her white faculty colleagues to act friendly towards the faculty of color to their faces, but “behind closed doors” there is the “[d]enigration of the person’s work, their scholarship or their teaching.” In fact, the existing literature suggests that Critical Race Theory, feminist legal scholarship, and other social justice-oriented research is often devalued by many faculty colleagues at legal institutions, though many women and people of color gravitate toward that work as central to and validating of their own experiences.⁸² Alicia recounts recent conversations where “several people came to my office and said, ‘Did you know that so and so goes around speaking ill of X?’ and then they said, ‘And so and so is

⁸² Tara J. Yosso, *Whose Culture has Capital? A Critical Race Theory Discussion of Community Cultural Wealth*, 8 RACE ETHNICITY & ED. 69 (2005).

also speaking ill of Y and Z.” It turns out that “X,” “Y,” and “Z” are all people of color whom Alicia’s colleagues did not support for promotion. Alicia notes that “there were two African Americans and one Latina who were up [for promotion]. All three of them were targeted.” While she did her best to protect them, this produced great anxiety for Alicia even though she herself was already tenured. In fact, perhaps because she was already tenured, she felt the need to do whatever she could to protect those being bad-mouthed by her colleagues, although she did not know how best to proceed. She “didn’t know which one was going to survive [the character assassination attempts] because . . . it’s random at some level. Everybody has weaknesses. Everybody has strengths.” She saw her colleagues as playing on particular stereotypes about people of color to target those applying for promotion, but agonized over how best to tailor her response and even over whether one would be productive; she wondered, “When is the subtle stoking of the stereotypes going to succeed and when is it not? I can’t always predict.”

For Laila, a Middle Eastern woman, distrust of her colleagues stems from the troubling shift in climate soon after she started her tenure-track position. While her initial reception as a “guest” may have been based on her “exotic” racial background, things got worse by the second semester:

The first semester everyone was very welcoming [but] it was just kind of like I was their guest [in their] home. I was new and exotic and different and I was, you know, energetic and they thought, “That’s so neat!” “This new person!” Sort of fresh blood. Then second semester I think jealousy sort of set in and I really sensed it. I got to the point [where] I didn’t even want anyone to know what I had accomplished because . . . instead of being complimented it was like you would get these very negative looks.

Laila’s initial reception as a “guest” as a woman of color faculty member on a predominantly white campus is not unusual. In fact, some have felt their unusual presence or interloper status was more akin to an “intruder” than a guest. For example, one contributor to *Presumed Incompetent* writes of a common feature of most law schools today: the lobby wall with numerous portraits of “dead white males and some living ones” memorializing famous and respected former faculty members, alumni, and donors to the school;⁸³ she feared these sentries noted her entry as a faculty member when she first began law

⁸³ Adrien Katherine Wing, *Lessons from a Portrait: Keep Calm and Carry On*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA*, *supra* note 25, at 356, 359-60.

teaching and she could virtually hear them silently “screaming—intruder alert.”⁸⁴

2. Birds of a Feather

In addition to the general sense of distrust and resulting preference for distance from most faculty, it is also common for women of color to seek out for closer relationships those colleagues who come from similar backgrounds, share similar professional experiences, or may otherwise have similar world-views. Valeria, a Latina law professor, is closest to the other junior faculty at her law school, though even those relationships are not especially close; she notes that they “do things outside the office every now and again, so it’s very collegial.” Vijay, an Asian American male, says that he and his fellow junior colleagues “talk a lot about issues: faculty governance issues, difficult votes, how things are going in the classroom, we socialize together, we are just a good group.” In this way, junior faculty often stick together, perhaps recognizing their unity through a shared lack of job security and other ways in which their professional position bonds them together.

Vivian, an Asian American law professor, is picky about her professional relationships, specifying, “I do have very strong relationships with particular colleagues.” Erin, a Native American woman, similarly notes that she has “some good friends” and sees her law school as “a really wonderful environment.”⁸⁵ She is “particularly close to my African American male colleague and my [white] lesbian colleague because sometimes I just think that they get things better than colleagues who are not necessarily from those backgrounds.” Here, Erin alludes to her shared experience with colleagues who come from backgrounds that have been traditionally un(der)-represented in legal academia and marginalized in society generally, noting that their shared perspective or world view may help them relate to Erin’s experiences as a female Native American law professor.

A number of female faculty of color agree with the sentiment that Annalisa, an Asian American, expresses about

⁸⁴ *Id.* While the challenges associated with faculty hiring are not discussed in depth in this Article, they are worthy of further study as a barrier to entry for faculty of color. Preliminary analyses of DLA data do show that institutional bias may thwart diversity in legal academia. Deo, *Trajectory of a Law Professor*, *supra* note 11.

⁸⁵ This is especially wonderful for Erin given the horrific experiences she endured as a female faculty of color in her first tenure-track position at a different law school. *See infra*, Part II.B.2.

the ways in which her female faculty of color colleagues provided her with the support necessary to sustain her through various professional challenges; she says, "I was able to survive because I had a core group of professors who were my friends, and we challenged each other's work and also provided moral support." Grace, a multiracial woman, provides specifics. She recounts a time when her Dean was providing summer funding for faculty to "develop these innovative ways of teaching, and one of the Associate Deans said to me, 'I told the Dean not to give you that [money because you] would do it anyway, so we don't need to pay you to do it because you'll do it anyway.'" Her Associate Dean was correct that Grace's strong investment in the school meant that she would do the work even without the monetary incentive; however, his candid interest in taking advantage of her commitment made Grace go "crazy with that whole assumption [that he] thought that was an appropriate way to think about creating incentives for faculty." She did not take it up directly with the Associate Dean, who is white, but called two colleagues "who are both people of color, both women, to talk through [it,]" and they both "totally [were able to] understand" her disappointment and disillusionment. She makes her first calls after these sorts of incidents to colleagues she trusts both "to make sure that the way I'm reacting is appropriate" and also "to figure out strategies for how to respond and what to do." Because she ultimately got summer funding that year, she decided to not pursue the matter further, but "it still pisses me off." Imani, a Black female, agrees, stating, "I would say my closest relationships are with the female faculty, particularly the three or four female faculty of color that we have." Thus, while faculty are cordial with one another, this civility masks underlying distrust and distance. Of notable exception are the close relationships female faculty of color have with one another and other underrepresented and often marginalized faculty members at their institutions whom they draw on for support.⁸⁶

B. Invisibility/Silencing and Sexual Harassment

"I've counted over 10 times on my faculty where I've said something and [nobody has responded; then] a male faculty has repeated it and another male colleague has said, 'Good idea!'" -Carla

⁸⁶ Meera E. Deo, *Sources of Support for Legal Academics* (work in progress) (on file with author).

The experiences of a number of female faculty participants in DLA reveal that gender discrimination continues to be a serious problem in legal academia. In fact, the white- and male-normative law school environment has been studied in both the student and faculty context. As students, “[w]hite males are the primary focus of classroom attention,”⁸⁷ often at the expense of women of color, men of color, and white women. Women students tend to be “called on less frequently than men,” and their comments are often met with skepticism or sometimes ignored outright.⁸⁸

The law faculty experience is quite similar, as documented in the existing literature. White women faculty and especially women of color professors rarely “enjoy the status, authority, and opportunity equal to that of white men working in the legal academy.”⁸⁹ There are ongoing racial and gender “disparities in terms of pay, tenure denials, and employment at the most elite law schools, in addition to double standards in assessing identical credentials.”⁹⁰ Likely because of this bias, women of color—who are viewed by others and often consider themselves to be “outsiders” in the white male culture of legal academia—have lower retention rates than white men.⁹¹

The DLA data confirms and elaborates on these past studies, specifically documenting ongoing gender concerns relating to invisibility/silencing and outright sexual harassment.⁹² In fact, the importance of relationships forged with those similarly situated—especially friendships between female faculty of color—seem to parallel the ways in which law students of color rely on their peers and the broad supportive structures within student organizations that provide them with social, cultural, and emotional support to sustain them.⁹³

⁸⁷ Deo, *supra* note 19, at 78 (quoting Nancy E. Dowd et al., *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL’Y 11, 27 (2003)).

⁸⁸ Resnick, *supra* note 32, at 570 (citing Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1299-1300 (1988)).

⁸⁹ Resnick, *supra* note 32, at 564.

⁹⁰ Barnes & Mertz, *supra* note 6, at 512.

⁹¹ *Id.*

⁹² This Article neither defines the standards for a formal sexual harassment claim nor asserts that participants in the DLA study have formal legal grounds for a suit. The term is used broadly to refer to extreme gender-based exclusion and work conditions that provide challenges for women to succeed.

⁹³ For more on peer mentorship and organizational mentorship for law students of color, see Deo & Griffin, *supra* note 8, at 311 (“[M]entorship is also positively associated with the mentee’s likelihood of retention.”).

1. Mansplaining and Whitesplaining

As an example of the male-centered workplace, a Black woman named Imani notes the numerous "times where I felt like some of the male colleagues look at themselves as above others and [are] not always respectful of others' contributions." Trisha, a Black female, blames these tensions for her current "extremely marginalized" position among her colleagues. In fact, the invisibility of women and especially women of color is stark. As a contributor to *Presumed Incompetent* notes of her first appointment as a legal academic, "I can recall being almost invisible . . . I seemed not to exist" to the other faculty members.⁹⁴ Many female faculty of color who participated in the DLA study shared similar experiences. Jennifer, a Native American, embodies this invisibility, in spite of her good-humored response to it:

[In] the four and half years I've been here there's a couple of people I haven't even had a conversation with. And they don't look at me. They don't acknowledge me. They don't seem to know who I am [laughing]. [They] just treat me like a non-entity.⁹⁵

Elaine, an Asian American senior member of her law school faculty, echoes Jennifer's remarks, noting that she has one faculty colleague "who really has never acknowledged my presence."

Male domination is most prominent during faculty meetings at many institutions, where silencing is especially pronounced. As a Native American woman named Melissa notes, "There is that silencing that goes on in our faculty meetings." She describes what she considers an affirming, almost welcoming "hazing" ritual for her junior white male colleagues that was never offered to her and the other women, "where junior white males . . . get coddled, get laughed at, get remarks made, get floor time, get affirmations, and the women don't ever." This is one way in which the male-dominant culture of law school is reproduced and perpetuated.

Both inside and outside the workplace, a woman's ideas, suggestions, or observations may be ignored until a man explains (or more frequently, simply repeats) her thoughts; sometimes the man honestly believes himself to be the one full

⁹⁴ Ruth Gordon, *On Community in the Midst of Hierarchy (and Hierarchy in the Midst of Community)*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA*, *supra* note 25, at 313, 327.

⁹⁵ Jennifer repeats this experience laughingly, and notes her overall experience as positive; though there are a number of objectively problematic encounters in her narrative, she has chosen to respond to them with humor and also copes by seeking escape with large swaths of time spent with her tribe.

of knowledge and ideas, virtually unaware of the woman's comments before voicing them as his own. This common occurrence, outside of legal academia as well as within, falls into the "archipelago of arrogance"⁹⁶ referred to as "mansplaining."⁹⁷ Mansplaining is an occurrence that many women readily recognize from their own experience of "having their expertise instantly dismissed because of the lady-shaped package it came in."⁹⁸ Mansplaining occurs at "the intersection between overconfidence and cluelessness," where some men repeat what women have already stated, claiming those statements as their own, and others accept and applaud, giving credit to the man who repeated the words rather than the woman who created them.⁹⁹ Rebecca Solnit, the author who pioneered the ongoing public debate over mansplaining (if not the term itself), shares that when men take it upon themselves to interpret for women or explain to women, they assume that a woman is simply "an empty vessel to be filled with their wisdom and knowledge," forgetting that women may even know more than the man himself on a particular topic.¹⁰⁰ Thus, before women can even provide arguments to support their worthy ideas, they must first fight "simply for the right to speak, to have ideas, to be acknowledged to be in possession of facts and truth, to have value, to be a human being."¹⁰¹ The many challenges associated with being heard, regardless of what is being said, "keeps women from speaking up and from being heard when they dare [or] crushes young women into silence by indicating . . . that this is not their world."¹⁰²

Mansplaining is sadly alive and well in legal academia, where many women receive the signal that they are unwelcome or do not belong, and so should know their place and remain silent.¹⁰³ As an example, a Latina named Carla notes, "I've

⁹⁶ Rebecca Solnit, *Tomgram: Rebecca Solnit, The Archipelago of Arrogance*, TOMDISPATCH.COM (Apr. 13, 2008, 6:14 AM), <http://www.tomdispatch.com/post/174918>.

⁹⁷ See, e.g., Jessica Valenti, *Mansplaining, Explained: 'Just Ask an Expert. Who is Not a Lady'*, GUARDIAN (June 6, 2014, 7:18 AM), <http://www.theguardian.com/commentisfree/2014/jun/06/mansplaining-explained-expert-women>.

⁹⁸ Helen Lewis, *The Essay that Launched the Term "Mansplaining,"* NEW REPUBLIC (July 4, 2014), <http://www.newrepublic.com/article/118555/rebecca-solnits-men-explain-things-me-scourge-mansplaining>.

⁹⁹ Rebecca Solnit, *Why Mansplaining is Still a Problem*, ALTERNET.COM (Aug. 12, 2012), <http://www.alternet.org/why-mansplaining-still-problem>.

¹⁰⁰ Solnit, *supra* note 96.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ In fact, it seems prevalent throughout academia generally, given that there is a website dedicated to academic mansplaining, *Academic Men Explain Things To Me, Where Women Recount Their Experiences of Being Mansplained*, in *Academia and Elsewhere*, <http://mansplained.tumblr.com> (last visited Feb. 2, 2015).

counted over 10 times on my faculty where I've said something and [nobody has responded; then] a male faculty has repeated it and another male colleague has said, 'Good idea!'" Again, this provides weight, acknowledgment, and appreciation for men while devaluing women.¹⁰⁴ Elaine, an Asian American, has had a very similar experience at her institution. She recalls, "I went through the stages of saying things at a faculty meeting and no one paid attention to it and then a man would say it and then everyone would pay attention to it." In this way, once a man explained and validated Elaine's remarks, others noted and appreciated them—albeit mistaking them for being first articulated by a male faculty member rather than by Elaine.

Combining the intersectional framework with the concept of mansplaining, we can consider how "*whitesplaining*" may also be relevant in legal academia. Smita, an Asian American, gets the sense that what she says "would carry more weight with the faculty if it were being said by white people." This is true whether she talks "about the importance of diversity or whatever else. We don't hear it enough from my white colleagues, even those who consider themselves progressive. So there is a sense of your voice being discounted in a lot of respects." Thus, white validation of Smita's suggestions or observations would give them more weight than when Smita makes them on her own. For women of color the invisibility/silencing and discrimination may be doubly and even cumulatively challenging—mansplaining multiplied by whitesplaining—because it is based on both race and gender.¹⁰⁵

Surprisingly, many gender disparities in legal academia, especially the devaluing of women, are particularly notable when compared to women's experiences in corporate law practice.¹⁰⁶ Many women participants in the DLA study specifically note that they did not experience such pronounced gender discrimination in legal practice, even when working at elite law firms.¹⁰⁷ Camila, a Latina scholar, says her "biggest

¹⁰⁴ See, e.g., Resnick, *supra* note 32, at 570-71.

¹⁰⁵ For more on how intersectionality creates not only additive but cumulative effects, see Delgado & Stefancic, *supra* note 29.

¹⁰⁶ In terms of numeric representation, diversity in law firms at the associate level is slightly better though similar to that of legal academia with roughly 11% women of color, 10% men of color, and 33% white women. Yet, representation at the partnership level leaves a lot to be desired with only 2% women of color, 5% men of color, and 18% white women. *Perspectives on Diversity*, NALP BULLETIN (June 2014), <http://www.nalp.org/0614research>.

¹⁰⁷ The corporate law firm realm has its own issues with gender discrimination. Some DLA participants reflect on those issues as well. For instance, Abigail notes, "I worked for the largest law firm in the city at the time and was one of just a few females. One of the litigation partners downtown told me that 'litigation is

challenge” in law teaching involved the cultural transition from being respected in legal practice to being virtually ignored by her colleagues in legal academia; this involved, “going from a place where I felt that my opinion was valued, work was valued, partners listened to me with respect,” to being at an institution where her colleagues “don’t want to hear what you say, people talk over you in faculty meetings, . . . or make faces while you’re talking.” She notes that “this kind of incredibly immature behavior” is gender-based, targeted specifically at the women by the men on her faculty.

Zahra, a Middle Eastern woman, recalls a meeting about faculty hiring where women voiced gender concerns that others pretended to care about, but ultimately ignored:

[S]everal of us junior colleagues were concerned about how a new [potential] hire was going to interact with women, and specifically we had heard complaints that he doesn’t work well with women. There were, you know, four of us [women] that expressed things in the appointments committee meeting, saying, “Look, we are concerned about this,” and some of the male colleagues acted like they cared; they said, “Well, you know, that sounds disappointing and we wouldn’t want that,” but everyone voted for him anyway [aside from the four of us women and two male junior colleagues].

That candidate was ultimately hired and will be starting at Zahra’s law school shortly. While she is approaching her new colleague with an open mind, she learned something about her existing colleagues because of the incident, noting that “it was just surprising that . . . we made our worries known, but [were] ignored. No one cared.” This speaks not only to gender bias but also the prevalence of expressing a “surface” interest in diversifying without recognizing this goal as a “core” priority, and thereby failing to act in a manner representing a true commitment to diversity.¹⁰⁸ Abigail, a senior white legal scholar, remembers that in the early days of her career in legal academia, adherence to traditional gender roles was expected. Women were clearly meant to take on subservient, silent roles. As an example, she recalls the following: “If we had a meeting and we needed a note taker there would be the turning of all

like war, honey, and you just don’t send women into combat.” See also Lisa van der Pool, *Big Law Firms Wrestle with Gender Discrimination Suits*, BOS. BUS. J. (Feb. 15, 2013, 6:00 AM), <http://www.bizjournals.com/boston/print-edition/2013/02/15/big-law-firms-wrestle-with-gender.html?page=all>. This Article does not attempt to minimize the concerns of women working in corporate law firms; rather, it simply points out that some women participants in DLA recognize that gender discrimination may be even more pronounced in legal academia.

¹⁰⁸ Rebecca K. Lee, *Core Diversity*, 19 TEMP. POL. & CIV. RTS. L. REV. 477, 479-80 (2010) (discussing “surface” versus “core” diversity ideals in the workplace).

eyes to whichever female was in the room and she would become the note taker." Some of these expectations continue today; as a white woman named Ava notes, "[S]ome of the senior colleagues in the building . . . treat me as a 'gal' and not as an intellectual equal."

2. Causes of the Clyde Ferguson Syndrome

In fact, though many senior women recall the gender challenges pervasive through the early days of their teaching careers, even those who entered legal academia in more recent years have faced what could readily be described as a hostile work environment.¹⁰⁹ Ava, a white woman who entered legal academia about 15 years ago, recounted how her law school Dean "hit on me." Ava's Dean (who had recently divorced) invited Ava to what she thought was a professional lunch; he then professed his feelings for her:

He asked if I was dating anybody. He made this big point of saying, "I hope you know it wouldn't be appropriate to date because I'm your boss, but I find you really attractive and awesome. And if I could I would really be interested in dating you."

Ava's response at the time was characteristic of young professional women in her situation: "[I]t made me really uncomfortable and I was shocked, because he was my boss, that he would make it clear he was interested in me romantically." This incident occurred before Ava earned tenure (which happened after this particular Dean left her institution).

Similarly, a white woman named Isabella recalls an incident that occurred soon after she joined legal academia a decade ago at an institution that she has since left: "One of my first faculty meetings there I spoke out on an issue and didn't realize women were meant to be seen and not heard." She remembers that one of her white male colleagues approached her afterward to say, "Wow! You're really articulate!" And that stunned me because I thought all of us on the law faculty would be articulate, but it really took this faculty member aback" that a woman had spoken up and spoken so well. Reflecting on the experience today, Isabella acknowledges, "There were some real serious gender issues while I was there."

¹⁰⁹ Again, this Article does not seek to outline strategies for filing formal sexual harassment claims against institutions based on a hostile workplace, though further research should be done to determine whether these common experiences are actionable.

A Latina law professor named Lola recounts a challenging time professionally for her, when she was denied promotion at her school. Though she suffered greatly, she says that "no one at school knew the pain and the betrayal I was feeling and that was incredibly exhausting to come to work every day and pretend like nothing was wrong." She relied on family and friends "for that relief of the stress and disappointment and all of that." She did not share her disillusionment with her faculty colleagues because "[a]t work . . . I have relationships, but again I don't fully trust people here."

When a Black law professor named Patrice was asked about the tenure process she had recently gone through, she replied, "Oh my god. [Sigh.] I have post-traumatic stress disorder." In part, she faced a challenge common to many scholars of color and others who are underrepresented in the legal academy and choose to focus on identity issues dear to them personally as part of their scholarship. As Patrice recounts it, "we have these white guys on the faculty who are really not . . . they're hostile to race work." She knew their perspective even before she applied for tenure and contemplated how that might affect her work, thinking it "was tricky because I wanted to be able to do the work I wanted to do but I also wanted tenure, right?" One coping mechanism she employed was not to share her work with her colleagues, though Patrice is at an institution where it is common for junior faculty to give regular talks to the full faculty. In general, the frequent presentations of scholarship in a nascent stage are beneficial to the presenter; as Patrice puts it, "[I]n this setting the critiques are constructive to help you get to the next point." Yet, because her scholarship included issues of race and ethnicity, some of her white male colleagues were not constructive, but instead the purpose of their "critiques [was] to shut it down and steer you in a different direction." So she made a calculated decision to disengage, to not present her work to the faculty. Though Patrice lost the benefit of potentially constructive feedback from some colleagues, she kept her sanity throughout her junior faculty years. She notes that as "an effort to be true to myself and just to sleep at night I felt like I had to just do it, [avoid presenting,] stay in my head with it which is also just very difficult and not particularly fulfilling as a place to be as an academic."

Patrice is one of the many DLA participants who admitted to serious health effects resulting from pursuing a career as a law professor. For instance, a Native American woman named

Melissa notes, "I find myself missing more days from illness and being a lot more stressed with no breaks." In fact, the most frequent comment along these lines echoes Patrice's admission that she felt she had PTSD.¹¹⁰ Existing scholarship has shown that many marginalized women of color faculty members enduring all manner of challenging situations believe that remaining silent is "the key to [their] survival in academia."¹¹¹ Many make the calculated decision not to speak out or find other coping mechanisms that allow them to function professionally. However, this self-censorship and self-silencing, the tendency to "bite your tongue and make no sound when you want to speak," can itself exert a significant emotional toll.¹¹² In fact, some scholars have tied the emotional challenges facing traditional outsiders in legal academia with ill-health and even untimely death; this has been termed "the Clyde Ferguson Syndrome" after the early passing of the revered Harvard Law School professor, a Black man who endured great challenges professionally that many believe affected his health significantly.¹¹³

Carla, a Latina law professor, may currently be enduring the Clyde Ferguson Syndrome herself. For years she has been putting into practice a professional strategy that she adopted after watching the relative downfall of a senior woman of color colleague. Recently, Carla "was supposed to be on research leave," but found out just weeks before that it was being rescinded. As she tells it, "[M]y Academic Dean called me and said, 'You can't go on research leave. You have to chair [a particular] committee.'" While some may have been flattered to be asked to be Chair of high profile committee, Carla saw the situation as a requirement that she continue institutional housekeeping, noting, "I've been in this long enough to know that's not really a compliment; that means someone needs to stay and clean the house [and] it's going to be you." In spite of

¹¹⁰ Bianca, a Latina, offers a useful strategy for combatting the challenges of being a woman of color law professor: "I balance the stresses of my job by being physically active."

¹¹¹ Angela Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25, at 142, 148.

¹¹² Women of color in legal academia sometimes feel they are simply going through the motions, playing a part as an academic, but remaining disinvested from the job because they cannot be themselves. Instead, they endure "feel[ing] like a clown. You smile when you do not feel like smiling. You bite your tongue and make no sound when you want to speak." Angela Mae Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25, at 20, 23.

¹¹³ See, e.g., Roy L. Brooks, *Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?*, 20 U.S.F. L. REV. 419 (1986).

being a senior faculty member, Carla did not feel she had the power to say no, to remind her Academic Dean that she had negotiated for her leave two and a half years prior. She admits that "it was really shocking, but I dealt with it by saying . . . Well I dealt with it with my ordinary strategy, which was to say, 'Okay.'" The fact that Carla was shocked but immediately acquiesced sheds some light on the Clyde Ferguson Syndrome, the negative health effects of being stunned, disappointed, knowing you are the victim of injustice, and yet remaining silent. Imagine the long-term consequences of this cycle repeating itself year after year. Carla herself has done this. She recounts the many ways in which she has worked to accommodate whatever requirements her institution imposes on her: "If someone said, 'Do this,' I did that. If someone said, 'Teach that,' I taught that. If someone said, 'You'll teach [at] 8 a.m.,' I taught at 8 a.m. If someone said, 'You teach summer school,' I taught summer school." One might expect that at some point Carla would resist, that she would either directly or even somewhat passively attempt to get out of these impositions. But she never felt she had the option of saying no or even hesitating before saying yes. She explains, "I didn't feel that I had [a choice] or wanted to risk saying no because then the gossip would start up: 'She's difficult,' 'She's not a team player.'" In fact, Carla had seen this exact pattern with the only other woman of color on her faculty, whom Carla says is "very, very well-credentialed," yet because she "said no early on [she] got pegged as not a team player." There were serious professional repercussions for Carla's colleague, which Carla interprets as "the price of saying no." After witnessing her colleague's trajectory, Carla explains that she "felt that I had to [say yes to] survive. I had to take in these requests and produce quality work." Her strategy has paid off professionally: Carla is well respected and certainly holds the badge of a team player. Yet, the personal emotional costs have been high. She notes that in a recent year she made a startling and disturbing realization: "I felt like I had PTSD."

Erin, a Native American, recalls other more egregious gender-based violations at her former law school workplace. She remembers some of her senior male colleagues "coming into the office and petting my hair, and telling me what beautiful hair I have, telling me I have large luscious breasts." There was a clear power imbalance, based on race, gender, and institutional status, among other things. Erin's intersectional experience of embodying so many devalued characteristics

clearly worked against her as a young, untenured, woman of color. Because the perpetrators were white "senior tenured members" and she was a woman of color and a "junior faculty member, you just don't want to rock the boat, so you don't say anything—at least I didn't say anything. And you regret it later and you carry that guilt." Erin admits that she has accumulated negative health effects from these incidents. The emotional toll of coping with that hostile workplace environment haunts Erin even today, though she quickly left her previous law faculty; she notes, "I actually have PTSD syndrome because of the amount of stress. I still have nightmares on a regular basis even though I'm very happy at my current institution." This overt gender discrimination, while not at every institution, is still a recurring theme in the experiences of women in legal academia.¹¹⁴

C. Comparison & Contrast

"I have good relationships with everybody. I don't think there are cliques here. People, like, respect and are nice to each other. I don't think there's any kind of feeling that I can't say [something] because it wouldn't be politically correct or [would] offend somebody." -Joe

The experiences of white men provide a significant contrast to the experiences of their female and faculty of color colleagues with regard to faculty interactions. For instance, when a white man named Matt was asked in the DLA interview about his relationships with fellow faculty, he responded in a way that is representative of the other white men in the DLA sample: "I really enjoy my colleagues. There's a lot of collegiality among young faculty, older faculty. It's a nice place to be." While Matt admits that he generally dislikes the inefficiency of large meetings, his "overwhelming thought when I go [into faculty meetings] is, 'I really like these people.'" He and the other white men in the sample do not mention stress based on sexual harassment or experiences of silencing from colleagues, as so many of their female colleagues do. A white man named Christopher is "very close" especially with people who were hired around the same time as he was, including "five couples who socialized together and vacationed together and sort of did everything together" for many years. Ian, another white male law professor, recognizes that there is

¹¹⁴ While there are challenging incidents in legal academia that are based primarily on race, they seem less overt and less frequent than gender-based or race-and-gender based incidents. There are, however, egregious racial violations with regard to discrimination in law faculty hiring, explored further in Deo, *supra* note 80.

a "broad diversity of views" on his faculty, but believes there is "a feeling of mutual respect" among his colleagues. While he has "good relationships with everyone," he also is especially close with "several of my colleagues," meeting them for "dinner parties [and other events] outside the law school." An even larger group meets frequently for "drinks or having picnics or other events together."

Most significantly, very few white male faculty members note confrontational or complicated relationships with colleagues. Recall again that white faculty note positive relationships not only with other white colleagues, but with those from all racial backgrounds; however, those feelings are not always reciprocated since faculty of color characterize these same relationships as less friendly.¹¹⁵ In other words, white faculty and faculty of color perceive the same interactions differently. Take, for instance, a white male named Joe who insists that he has "good relationships with everybody." Though he is especially close to those who research and teach in his field, he thinks nobody "would describe us as a clique" in part because he believes "[t]here aren't any factions" at his law school. Interestingly, he insists both that all faculty members "respect and are nice to each other," and that he is comfortable expressing his views, whatever they may be, since there is no institutional norm of self-regulation even when saying something that "wouldn't be politically correct or [might] offend somebody." Note that Joe's female faculty of color colleagues might see his comments as politically incorrect or offensive, though he feels comfortable speaking his mind.

Where white male faculty may see many positives, white female faculty and especially female faculty of color perceive the white male climate pervading the culture of the law school, and recognize it as one that excludes them.¹¹⁶ A white male named John's experience is typical; he notes of his relationships with faculty colleagues, "I don't have any particular challenges in terms of getting along." Of course, if we asked John's white female and female faculty of color colleagues to characterize their relationships with him and others, they might not see these interactions as he does.

¹¹⁵ See *supra* Part II.A. for more on how different faculty view the same relationships differently.

¹¹⁶ See, e.g., Angel, *supra* note 59.

III. CONFRONTATIONAL INTERACTIONS WITH STUDENTS

"The [white] guys with their baseball caps on backwards . . . are challenging just everything you are saying. [Y]ou try not to follow them down that road and try and maintain control of the class and just teach the class, and there they are, like the gnat just driving you crazy." -Patrice

Faculty relationships with students are both incredibly wonderful and impossibly trying. DLA data show that individual faculty members who very much enjoy close and nurturing relationships with some students often have especially fraught relationships with others. This Part discusses the quality of student-faculty interactions, as well as their frequency.

In addition, as would be expected, the vast majority of faculty report "a lot" of interaction with white students (See Table 6). In fact, female law faculty of color from various racial/ethnic backgrounds have about equal levels of interaction with white students as do white men, white women, and men of color (See Table 6).

TABLE 6. FREQUENCY OF INTERACTIONS WITH WHITE STUDENTS, BY RACE & GENDER, DLA 2013 (N=92)

	A Lot	Some	Not Much	TOTAL
Black Females	15 (71.4%)	6 (28.6%)	0 (0.0%)	21
Asian/Pacific Islander Females	14 (93.3%)	1 (6.7%)	0 (0.0%)	15
Latinas	8 (66.7%)	3 (25.0%)	1 (8.3%)	12
Native American Females	4 (80.0%)	0 (0.0%)	1 (20.0%)	5
Middle Eastern Females	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Multiracial Females	7 (100.0%)	0 (0.0%)	0 (0.0%)	7
White Males	7 (87.5%)	1 (12.5%)	0 (0.0%)	8
White Females	10 (90.95)	1 (9.1%)	0 (0.0%)	11
Men of Color	10 (90.9%)	1 (9.1%)	0 (0.0%)	11
TOTAL	62	7	2	92

Still, the quality of those interactions does differ by race/gender (See Table 7). For example, only 29% of Black women faculty members characterize their interactions with white students as “very friendly,” compared with 63% of white men, 73% of white women, and even 73% of men of color who enjoy “very friendly” relationships with white students. As a whole, women of color characterize their interactions with

white students significantly differently than all other faculty do. The only individual in the sample to characterize the quality of interactions with white students as "hostile" is a Black woman. No whites, neither male nor female, characterize their interactions as even "distant," whereas small numbers of both women of color and men of color do.

TABLE 7. QUALITY OF INTERACTIONS WITH WHITE STUDENTS, BY RACE & GENDER, DLA 2013 (N=92)

	Very Friendly	Sociable	Distant	Hostile	TOTAL
Black Females	6 (28.6%)	12 (57.1%)	2 (9.5%)	1 (4.8%)	21
Asian/ Pacific Islander Females	11 (73.3%)	4 (26.7%)	0 (0.0%)	0 (0.0%)	15
Latinas	6 (50.0%)	5 (41.7%)	1 (8.35)	0 (0.0%)	12
Native American Females	2 (40.0%)	2 (40.0%)	1 (20.0%)	0 (0.0%)	5
Middle Eastern Females	0 (0.0%)	2 (100.0%)	0 (0.0%)	0 (0.0%)	2
Multi- racial Females	3 (42.9%)	3 (42.9%)	1 (14.3%)	0 (0.0%)	7
White Males	5 (62.5%)	3 (37.5%)	0 (0.0%)	0 (0.0%)	8
White Females	8 (72.7%)	3 (27.3%)	0 (0.0%)	0 (0.0%)	11
Men of Color	8 (72.7%)	1 (9.09%)	1 (9.09%)	0 (0.0%)	11
TOTAL	49	35	6	1	92

Positive student interactions are evident from the qualitative data as well. In fact, many female faculty of color

spend a great deal of time mentoring students, especially students of color, women students, and other underrepresented or marginalized students who seek them out. Students are sometimes so dependent on particular faculty that it becomes challenging for the professors to meet their other personal and professional obligations. In spite of positive interactions with students overall, most women of color report serious challenges from students in both the classroom and during private meetings elsewhere on campus.

A. "Positive" Personal Interactions

"I love my students as a general matter. I always have." -Grace

1. Role Modeling

Faculty members from all racial/ethnic and gender backgrounds are positively glowing about their students. For instance, a Latina law professor named Martha says that students are "the best part of the job really." Laura, a Native American, agrees, stating, "Oh well, of course, your relationship with students is one of the best parts about the job." Adam, a white man, says, "I really like our students." A multiracial faculty member named Grace gushes, "I love my students as a general matter. I always have." Chloe, a white female faculty member says, "To me the students are the best part of any law school."

Female faculty of color are especially grateful for and receptive to the students of color and other marginalized students who gravitate toward them. Aisha, an Asian American, notes that she has "a following . . . I have my groupies and they follow me from class to class and I have never ever had an issue filling my classes." Imani, a Black female, is also "very close to the students." She notes that because the first institution where she taught had an especially diverse student body, "I could earn my stripes as a new teacher in a room full of students that generally looked like me."¹¹⁷ Perhaps because of their shared identity, Imani's former students accorded her a great deal of respect from the outset of her

¹¹⁷ Imani began her law teaching career at a historically Black institution. In fact, the experiences for both students and faculty at historically Black institutions differ greatly from those at predominantly white institutions, including diverse schools that were not founded on a mission of educating traditionally underrepresented students. See, e.g., Guiffrida, *supra* note 59. In part for these reasons, historically Black law schools are not included in the DLA sample, though some experiences working within them come through from faculty who taught at those institutions in the past and now are employed by predominantly white law schools.

law teaching career; she therefore “did not have to deal with a lot of the challenges” facing faculty of color at predominantly white institutions “in regards to white male students challenging them and this presumption of incompetence.”

Sometimes students at predominantly white institutions are especially grateful for the few faculty of color employed there.¹¹⁸ Erin, a Native American law professor, appreciates that her students “are very hardworking” and “dedicated.” She recognizes that their respect and deference to her may be because “they’re thankful” that a Native American woman joined their faculty, since there are very few students of color on campus and even fewer faculty of color. In fact, it is a common occurrence for faculty diversity to lag behind student diversity, even or especially at schools with little student diversity.¹¹⁹ Hannah, a multiracial female who is very involved with student events and competitions, says that the students at her institution “are so kind,” she says she receives “dozens” of thank you notes “on an annual basis” from grateful students who appreciate the considerable time and attention she lavishes on them.

2. Overburdened by Service

The students send these notes to reward Hannah’s hard work and extraordinary efforts at supporting them. Female faculty seem especially connected with their students, as well as both nurturing and willing to take time to counsel students through personal and professional matters. Past empirical research using law student research subjects has shown that students from all race and gender backgrounds are especially drawn to female faculty and faculty of color.¹²⁰ “Students of color and white students alike report that faculty of color are often more accessible than whites and that female faculty tend to engage students more than male faculty.”¹²¹ This accessibility comes through in the DLA data as well. For instance, Hannah knows that because the students view her as

¹¹⁸ For more on faculty-student interactions from the student perspective, see Meera E. Deo et al., *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 17 (2010). Students from all race/ethnic backgrounds flock to white women and especially women of color for support with personal and professional matters. See Deo et al., *supra* note 79, at 87.

¹¹⁹ See, e.g., Anupam Chander et al., *Why Don't Law Faculties Look Like Their Students? Some Conjectures*, Paper Presentation at Law & Society Annual Meeting (June 2012) (presentation slides on file with the author).

¹²⁰ See, e.g., Deo et al., *supra* note 79, at 87.

¹²¹ *Id.*

“pretty approachable,” they seek her out not only for help understanding class material, but for any number of personal and professional matters:

I have students coming into my office asking for advice in my classes but also what to do with their lives or if they have difficulty in a particular other class how to prepare for that or what courses I might recommend. Or if they are unsure about their schedule and they want to check. I've had students cry in my office because of personal issues.

Similarly, a Latina named Bianca has “a number of students who frequently stop by my office,” some of whom are not even in her classes, but “that just simply know about me or hear about me and want to come get advice about this or that.” A pre-tenured white female law professor named Madison finds it “easy” to interact with her students, especially those who “are not hesitant to come into the office or to send an email and ask a question.” She does not even need to “do so much approaching and encouraging for the students to come and talk to me” because they seek her out on their own. Many students also open up to female faculty and especially female faculty of color about serious life challenges. Haley, a multiracial female, acknowledges, “I get a lot of women coming into my office complaining about sexual harassment, stalking, or domestic violence they are experiencing.” She thinks that “they feel comfortable and they seek my help” in part because she covers all of these issues in her Criminal Law course, whereas “a couple of the men who teach Crim Law [here] don’t cover rape, sexual assault, or domestic violence.”¹²² In fact, the literature makes clear that white women, women of color, and men of color are more likely than white men to include relevant context in classroom discussions of substantive law, and that students appreciate these opportunities to engage with what is often abstract legal material on a practical level.¹²³ It is not surprising, then, that when students see their own experiences within this context, they are drawn to discuss it further with the faculty members who are comfortable bringing it up in class.

¹²² While uncommon, a few male participants in the DLA study also note some close student interactions, including a white male named Joe who says, “I had a number of students come and break down in my office, crying,” and an Asian American named Vijay who notes that he has “an open door policy” and lots of students “asking for guidance” with regard to “career paths or thinking about doing things outside of the law,” and even “personal problems [or] problems they are having with other faculty.”

¹²³ Deo et al., *supra* note 118, at 29. Diversity discussions are classroom conversations regarding sensitive and personal topics including race/ethnicity, gender, and sexual orientation. See, e.g., *id.* at 2-3; see also Deo, *supra* note 19, at 95.

Though rewarding, these frequent activities and emotional meetings with students can be a burden for the faculty they turn to: often white female faculty and female faculty of color. In fact, other research has noted that overwhelming service obligations are but one of “a myriad of demands [that] are placed upon their professional lives the likes of which their white counterparts do not . . . experience.”¹²⁴ Kayla, a Black female participant in the DLA study, knows this is true for her, noting, “I definitely feel I bear the disproportionate impact, the brunt, of service to students of color.” She knows that students turn to her in times of need; she does not turn them away, but rather encourages them to seek her out as one of the few female faculty of color on campus. White women faculty and especially women of color faculty are particularly welcoming of female students and students of color, whom they realize seek them out because there are few others they connect with on the predominantly white male faculties at most law schools.¹²⁵ For instance, a Black law professor named Gabrielle very much appreciates “the opportunity here to mentor African American students. I spend a lot of time. I do the [Frederick Douglas] Moot Court and all those things with them and all those things are personally rewarding for me.” Though Gabrielle notes that these student service experiences are rewarding, they also take up a significant portion of time that she could otherwise spend on research, class preparation, other service obligations, or even personal endeavors.

What is especially problematic about these constant service contributions is that they are rarely formally recognized come time for promotion or tenure, or when determining a possible course reduction or yearly bonus. Ava, a white woman, recalls that when she first started teaching 15 years ago, “I was one of the few women in the building and certainly the only young one.” She thinks that may be why she “got surrounded by students all the time [who] wanted my attention.” Ava’s students had few others they felt comfortable relying on. Yet, her colleagues were likely blissfully oblivious that their comparatively smaller investment in these contributions meant that Ava became “weigh[ed] down . . . with university service and mentoring responsibilities.”¹²⁶ Though Ava “wanted to be

¹²⁴ Brooks, *supra* note 113, at 420.

¹²⁵ In this sense, particular students may be burdening female faculty and faculty of color “out of necessity.” *Id.* at 421.

¹²⁶ Mary Ann Mason, *In the Ivory Tower, Men Only*, SLATE (June 17, 2013, 5:30 AM), http://www.slate.com/articles/double_x/doublex/2013/06/female_academics_pay_a_heavy_baby_penalty.html.

the professor that [was always] available for them," when she gave her students full access, "they would just suck up every ounce of time I ever had." Unfortunately, the research in this area has consistently shown both that faculty of color and female faculty take on enormous service responsibilities, especially those related to students, and that these undertakings are rarely rewarded or even acknowledged when the larger faculty and administration evaluate faculty for tenure or promotion.¹²⁷

Jane, a multiracial female, has learned to strike a balance, saying that while she used to schedule "particular, private meetings" to look over outlines or talk through class material, she now is more insistent that students make an effort to attend her set office hours for these questions. She was otherwise frequently scheduling meetings with students at times that were inconvenient for her and made both her family life and other work obligations (i.e., research) more challenging. Still, Jane remains accommodating and approachable, saying that "even now if someone has a personal issue that they need to talk about, I would always set a private meeting for that purpose."

B. *Classroom Challenges: Dissatisfaction Leads to Confrontation*

"Oh my god, we got the Black lady teaching us and they got the white guy?!" -Susan, recounting student attitudes on her first day teaching

In spite of their strong relationships with particular students, women faculty members are much more likely than men to have objectively negative experiences with students, especially in the classroom. Scholarship has begun to document the ways in which female faculty, particularly female faculty of color, endure a disproportionate share of classroom challenges from students.¹²⁸ In part, this is because "both minorities and women are presumed to be incompetent as soon as they walk in the door."¹²⁹ The early literature on this topic revealed instances where female faculty of color:

¹²⁷ Legal scholar Roy Brooks suggests law faculty of color be given "some relief from committee assignments" to compensate for the extra time they spend on law students. Brooks, *supra* note 113, at 425.

¹²⁸ Bell & Delgado at 369-70; Meera E. Deo, *A Better Tenure Battle*, 28 COLUM. J. GENDER & L. (forthcoming 2015).

¹²⁹ Sylvia Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities?: The Perils of "Doing" Gender and Race in the Classroom*, in PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25, at 164, 177.

were "shouted down in the classroom by white males, shunned by colleagues, had their teaching credentials openly challenged in the classroom, received anonymous and detailed hate notes critical of their teaching style, syntax and appearance and discovered colleagues had encouraged students to act disrespectfully" ¹³⁰

Sadly, little has changed today. The DLA data reveal how female faculty recognize the disappointment of students who realize they will have a woman of color as a professor. Direct classroom confrontations often ensue, especially from white male students.

1. Presumed Incompetent

Some classroom challenges may be attributed to tokenism: the very small numbers of female faculty of color at most institutions mean that each one stands out as different from the norm.¹³¹ Coupled with outright racism or even implicit bias,¹³² this difference from the norm translates as a presumption of incompetence and doubts about the qualifications of women of color law professors.¹³³ Because of this presumption, as a multiracial female named Emma notes, "I have a harder barrier to prove myself to students [which includes] proving that I'm qualified to teach them, that I know my material." Because they do not look like the traditional (i.e., white male) law professor that many law students expect, most female faculty of color have a hard time convincing students that they are legitimate law professors. Gabrielle, a Black female, acknowledges that "being young and looking very young" combines with her race and gender to count against her; the "looks on their faces on the first day of class when it comes to first year students [suggest their confusion and disappointment], 'You can't possibly be my professor!'" A Black female named Susan noted the disappointed looks on her students' faces on her first teaching day, attributing it to them thinking "they had the dud professor," and comparing their misfortune to the lucky other section of law students: "Oh my god, we got the Black lady teaching us and they got the white guy?!" Their sense of entitlement to have a white male law

¹³⁰ Gordon, *supra* note 94, at 320 (quoting Linda Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY WOMEN'S L.J. 81, 83 (1990-1991)).

¹³¹ See *supra* Table 2 (with AALS statistics showing that women of color account for only seven percent of American law faculty).

¹³² For more on implicit bias, see *supra* Part I.A.

¹³³ See PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25.

professor and the injustice they felt at finding their law professor was a woman of color was apparent to Susan.

Aisha, an Asian American, sees the students' disappointment at having her as their professor as coming from her position as "a woman of color in front of students that don't see women of color in those positions of power oftentimes and don't know what to do." Mariana, a Latina, got the sense "[e]arly on [that] they resented me because I was a woman of color. I didn't look like the other guys [teaching]." Of course, she is correct; with only 772 female faculty of color out of almost 11,000 total, women of color look like neither the traditional law teacher nor like most of their faculty colleagues.¹³⁴ Gabrielle, a Black female, thinks wistfully about what it would be like if there were more diversity in legal academia, noting that "it might make it seem more normal for me to be at the head of the classroom if there were more people [of color]" in law teaching. Stacey, a Black woman teaching "in a really white place with people who are really white. I don't know how else to describe it!," notes that for many of her students, "I'm the first Black professor they ever had, maybe even their first professor of color." Based on that, she sees "a lot of ignorance" in her classroom and on the campus generally, especially regarding racial sensitivity.

2. Confronting the Unexpected Authority Figure

Sometimes that ignorance spills into hostility. Gabrielle, a Black female, recalls that her first semester teaching "started off very bad, very hostile" because of "some students who were unhappy to have the young Black professor And [they] referred to me outside of the classroom as 'that Black professor.'" In fact, after their very first class meeting, "a big group" of students were so "up in arms about it" that they complained to the Assistant Dean.¹³⁵ Gabrielle recalls, "[T]he basis of their complaint was, 'She's the new professor. We don't want her. We want the other Con Law professor'—who had been teaching for all of two years." Thus, while the students built a façade of preferring the other professor because Gabrielle was new, the white male professor's own minimal experience reveals that their true rationale for preferring him was likely based on race and gender bias, implicit or otherwise.

¹³⁴ See *supra* Table 2 for details on law faculty statistics by race and gender.

¹³⁵ Many women of color in the DLA sample note that students formally complain about them to administrators at their law schools.

Laila, a Middle Eastern woman, also got more than strange looks on her first day as a law professor:

I had this young white male come to me and right in my face, right before we start, I hadn't even started teaching yet, I'd just come to the podium and he looked at me and he goes, "Have you ever taught before?" And I looked at him and I said, "Yes." And he goes, "Yeah, but have you ever taught Torts before?" Literally in that tone and I said, "No, but you'll be okay." He just scowled at me and he walked away.

Again, this harkens back to the outright confrontations detailed in the early literature. These have not abated in spite of some numeric increases in faculty diversity.¹³⁶

Yet, numeric increases alone are not sufficient. Structural diversity—diversity in numbers—does not automatically translate into meaningful cross-racial interaction, either in the classroom or on campus more generally.¹³⁷ In other words, critical mass is a necessary but insufficient condition for ensuring the types of benefits we expect from diversity. For actual benefits of diversity to accrue, individuals must be in mutually respectful environments where they have an opportunity to listen and learn from one another.¹³⁸ This environment does not seem to be the standard in law schools today, either for faculty or for students.

A multiracial faculty member named Sofia remembers that "the very first class that I taught was a disaster." First, she recalls "sort of a mutiny" because she banned laptops from her seminar. Parsing just these details, we know already that Sofia had three strikes against her from that first day: the first because she is a female law professor (outside the gender norm), the second because she is a faculty member of color (outside the racial norm), and the third because she banned laptops (outside the norm at her school of allowing laptops in class). Sofia remembers the rest of the semester as "truly dreadful," with a variety of confrontations in every class: "people being very obnoxious and defiant and texting, like

¹³⁶ In fact, the numbers have increased significantly from the slightly over 300 faculty members in the legal academy whom Bell and Delgado attempted to include in their study, though the qualitative experience remains troublingly similar. Delgado & Bell, *supra* note 14, at n.17.

¹³⁷ See Deo, *supra* note 19, at 84.

¹³⁸ See, e.g., Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 L. & SEXUALITY REV. 133, 171 (1991) ("Empirical research with other minority groups has shown that inter-group contact often reduces prejudice in the majority group when the contact meets several conditions: When it is encouraged by the institution in which it occurs, makes shared goals salient, and fosters inter-group cooperation; when the contact is ongoing and intimate rather than brief and superficial; and when members of the two groups are of equal status and share important values.")

having their iPhones out and texting right in front of me.” They also expressed their displeasure with Sofia outside of the classroom; she recounts that “three students ran a campaign about how I should lose my job,” seeking support from the administration in their quest to be rid of her. Because of the painful experience, especially the ways in which “race was brought up in all of this hostility,” she has never taught the seminar again. Similarly a Black woman professor named Keisha remembers that “one student basically told me that they had other things to do than to do my written assignments.” Of course, failure to complete required assignments would count against the student when it came time for grading, but the student’s brazen disrespect made for a challenging classroom environment for Keisha in the meanwhile.

Armida, a Latina, recognizes that the students who are constantly challenging her “tend to sit together,” and are usually “white, male, [and] arrogant,” especially her second-semester students who “know they’ve done really well” in their first semester of law school. This one semester of law school success gives them “this confidence that they know more than I do,” which leads to “a lot of challenging within the classroom.” Again, this disrespect often stems from the students’ disbelief that the woman of color in front of the room is qualified to teach them and might know more than they do. In Armida’s experience, it is “always white males” who are confrontational, whereas her white female students “tend to appreciate what I’m doing,” and students of color “relate to me and I see it.” Madison, a white untenured law professor, recognizes that “there is a challenge being a younger-looking female professor” especially because there are always some “male students” who end up “challenging your authority.” Natalie, a multiracial female, remembers “one guy who came in 45 minutes late to a 55 minute class.” After Natalie asked him to leave, “he had me up against the wall with his finger [in my face] like, how dare I kick him out of the class.” This physical intimidation may be rare but is still a threat facing female faculty of color on law school campuses today.

Patrice, a Black female who had taught upper-level classes for a few years before being assigned to teach a first-year course, was similarly “unprepared for the level of . . . racism and sexism that people have told me about forever but [that] I’d never experienced” in upper-level classes. She remembers most vividly “the [white] guys with their baseball caps on backwards that are challenging just everything you are

saying." She tried to maintain the upper hand, to not "follow them down that road and try and maintain control of the class and just teach the class, [but] they are like the gnat just driving you crazy." Because of this, Patrice learned how much of a "challenge" it is to make students take her seriously when they simply "see young, Black, and female. And I'm not young but I don't think they know how old I am! And I feel like I just have to work a lot harder to prove my authority and mastery."

In fact, Patrice does have to work harder than her colleagues since she is battling against the presumption of incompetence that accompanies women of color into the classroom on their first day teaching and takes great effort to overcome.¹³⁹ Hannah remembers that "especially my first year, there were students who would ask questions [drawing from] things that were a few pages ahead in the text beyond what the reading assignment was for that given day," and use a "tone of voice that demonstrated it was a challenge rather than a legitimate question." She makes clear that these were not necessarily "illegitimate question[s], but rather than simply a question that the tone of voice was very challenging." So she would register the question, coupled with "the tone of voice," and "the look on the face;" together she took these as the student attempting to be "very challenging, [as if his motivation were,] 'Let's see if she'll get it or if she can handle it.'" Thus, while particular questions may have been legitimately about the course, they were drawn from material not assigned for the day, coupled with a confrontational tone and a superior look on the student's face to make clear the question was more of a challenge than a polite and enthusiastic inquiry from an eager learner.¹⁴⁰

Sometimes classroom confrontations spill into challenging private meetings. For instance, a Latina named Bianca recalls "my very first semester a student coming in[to my office], and I think he thought he was maybe doing me a favor, and saying, 'I'm just not used to someone who teaches like you,'" and suggesting changes to her teaching style and pedagogical approach. It was likely true that this student had not had anyone who looked like Bianca teaching him before,

¹³⁹ Individual strategies for overcoming the structural challenge of being presumed incompetent, as well as some necessary structural solutions, are discussed *infra* at Part IV.B.

¹⁴⁰ Some white male colleagues have a hard time believing these as anything other than legitimate questions. Yet, many women of color in the DLA sample articulate Hannah's experience of the context coupled with the question indicating it is more of a challenge to authority than an innocent inquiry.

given the paltry numbers of female faculty of color in legal academia.¹⁴¹ Yet, he either failed to register as disrespectful his request that his law professor change her style to accommodate his preferences, or was unabashedly rude to his Latina professor. Even more dramatically, a Black woman named Trisha recalls, “I had one student tell me once, and he thought he was being a friend, he said, ‘I never had a Black woman tell me anything who wasn’t dressed in white.’” Initially confused about what this meant, it “took me a minute [before realizing that] the roles he was assigning me were maid, nurse, [etc.].” As Aisha, Mariana, and others note, they are often the students’ first woman of color authority figure; Trisha’s student simply made explicit the roles he expected Black women would continue to play in his life. Jennifer, a Native American, had a private meeting with a white student who felt she deserved a better grade than the one she earned. Jennifer recalls:

[The student] was very disrespectful. And when I explained to her why she received the grade she had, she rolled her eyes and crossed her arms and said bad things about my teaching. You know, “Well you didn’t explain this right.” At one point I just stopped her and said, “I don’t think we’re communicating in a positive way right now,” and so I said, “Maybe we should take a break and check in after we’ve both had some time to cool down a little bit.” And she got up and stormed out of my office. She left and I said, “I think we should talk again.” And she said, “No, don’t bother.”

Thus, even when female faculty of color reach out to students and make attempts to be inclusive and understanding, these efforts are often rebuffed by students who are unable or unwilling to recognize that all of their faculty members are competent, but instead take every opportunity to challenge the authority of the female faculty of color.¹⁴²

C. Comparison & Contrast

“I’ve never been a professor who students approach when they have issues.” -Ed

¹⁴¹ Again, Latinas comprise just 1.3% of American law professors—including not only tenured and tenure-track faculty, but also visitors, contract, legal writing, library, and other faculty members. With just 138 Latinas out of 10,965 law faculty members total, this particular student would likely never encounter a professor who looked like Bianca again. See *supra* Table 2.

¹⁴² Some students leave equally egregious anonymous comments on teaching evaluations, especially when commenting on female law faculty of color. Analyses of the DLA data show that women of color law professors endure spiteful, unproductive critiques from students, many of which focus on style or personal appearance instead of teaching effectiveness. For more on these additional but related challenges, see Meera E. Deo, *A Better Tenure Battle*, 31 COLUM. J. GENDER & L. (forthcoming Aug. 2015).

Male law professors from different racial/ethnic groups offer interesting contrasts to the experiences of the women detailed above. Some male faculty of color have similar experiences with students outside of the classroom. Many are inundated by student requests that they feel compelled to accept, which leaves less time to work on research or focus on other responsibilities. For instance, a Native American man named Stuart recognizes the significant burden that he and other faculty of color face because "the diversity of the students is much better than the diversity of the faculty in terms of mere numbers, [which means that] faculty of color are inundated with all this extra work." Stuart is "constantly asked to advise on papers and for groups and to go to events," especially by students of color. Although he "want[s] to do as much as [I] can," he has "little kids at home and it makes it difficult" for him to commit to these extra work obligations and still meet his personal responsibilities.¹⁴³ He does not think his situation is unique, but rather thinks that "all the faculty of color are inundated." In fact, the literature supports this perspective, explaining that a number of students of color "simply feel that there is no one else on the faculty who can understand their problems or who really cares about resolving them."¹⁴⁴ In spite of his efforts at accommodating student requests, Stuart is disappointed that all of these extra efforts directed at students do not count for "anything when it comes to going up for tenure."

On the other hand, the experiences of most white men and some men of color in the DLA study differ considerably from the general trend among female faculty and especially female faculty of color who go to great lengths to meet their students' needs. Ed, a multiracial man, and Ian, a white man, offer interesting and representative contrasts to the experiences of Kayla, Gabrielle, Jane, and other female faculty of color. While Ed's relationship with students overall is "[p]retty good," even the students of color "really don't lean on me," he admits, "I've never been a professor who students approach when they have issues."¹⁴⁵ Similarly, Ian notes, "I

¹⁴³ For more on work/life balance among law faculty, again drawing from the DLA data, see Meera E. Deo, *Becoming Family Friendly* (work in progress) (on file with the author).

¹⁴⁴ Brooks, *supra* note 113, at 421.

¹⁴⁵ Some men of color in the DLA do make a concerted effort to connect with students. Vijay, an Asian American, says his "relationship with students is very positive," perhaps in part because he "believe[s] faculty members are there to serve the students." A Black man named Michael "handpick[s] mentees from the 1L class," and is so devoted to them that he "stay[s] up at night thinking about them and how to get

probably don't have as deep a relationship with students where I'm their first call for situations or issues." Again, this is likely because the students' first call is to the female faculty and especially the female faculty of color they sense as the most receptive to addressing their needs.

While many white women and women of color struggle to assert authority in the classroom, students give white men and men of color alike significant deference. Joe, like almost all faculty in the DLA sample, found his first days of teaching "[v]ery stressful," in part because he was new to the material and "wasn't as in command of the subject matter" as he would have liked. Nevertheless, within "a month or two, I got the hang of it and everything felt fine." For Joe, a white male law professor, only the material was challenging, not the students or their interactions with him. In fact, when Joe reflects on the large first-year classes he taught, he remembers both that he "enjoyed that," and that he was slightly concerned about how the students did not interact much with him because they were "intimidated by me." Thus, the students were so respectful of their white male professor that they rarely interacted with him at all—perhaps the opposite of the near-constant confrontations facing female faculty of color in the classroom.

Similarly, when asked to reflect on his first year teaching, an Asian American man named Andrew recalls, "It was overwhelming how much work it was," even in comparison to earlier full-time positions as a judicial law clerk and law firm associate. Yet, Andrew had no confrontations from students or challenges to his authority in the classroom. Instead, he says of the students that "even my first year, everyone was supportive." In spite of his current acknowledgment that "[l]ooking back, I feel that the quality of my teaching wasn't great," at the time he nevertheless "consistently got amazing reviews and feedback from the students."¹⁴⁶ Again, Andrew's male privilege in the classroom likely afforded him a measure of respect wholly absent from the classrooms of his female colleagues. This enabled him to focus on mastering the material, while his students encouraged and supported him as he learned how best to teach them.

them the next opportunity." While Michael puts "a lot of time and a lot of investment" in his mentees, most men in the DLA sample do not seem to follow his lead.

¹⁴⁶ Jack, an Asian American male, is especially sensitive to how some faculty fail to take him seriously or even mistake him for a student. Still, this has never been a hindrance in the classroom; he even won a teaching award soon after he started teaching law.

IV. BEST PRACTICES: STRATEGIES TO COMBAT DISCRIMINATION

"I think over-preparation is the norm. I mean you just don't get the benefit of the doubt." -Brianna

A. Creating Faculty Inclusion

"Hey, why are we all looking at the girls? I'll take notes [today]. Next time, John, you can take notes." -Abigail, recounting a suggestion from her white male colleague

Just as Bell and Delgado noted 25 years ago, a number of faculty of color in legal academia today are distrustful of their faculty colleagues.¹⁴⁷ Women of color face intersectional discrimination, doubly discriminated against because of their multiple devalued identity characteristics.¹⁴⁸ While many faculty members from traditionally and currently underrepresented groups characterize their relationships with peers as cordial, most are not close, especially to white male faculty members. Instead, the closer relationships for female faculty of color are with other individuals from marginalized groups, including women, people of color, and those in the LGBTQ community. Many see through the mask of collegiality to the incivility of their colleagues. The distrust that many female faculty of color feel is based on challenging interactions, including numerous instances of white faculty trivializing their experiences, denigrating their work, and putting roadblocks in the way of their professional success.

The DLA study reveals that there are ongoing gender-related incidents on law school campuses, many of which invoke both racism and sexism.¹⁴⁹ To combat this, even small changes can have a big impact on gender inclusion. Participants in the DLA study identified a number of "best practices," tried and true strategies for combatting the discrimination they continue to face. This Part shares findings

¹⁴⁷ Delgado & Bell, *supra* note 14, at 357-59.

¹⁴⁸ DLA includes male and female LGBTQ participants, including white and non-white law faculty members. However, the data does not reveal patterns of overt discrimination or harassment based on sexual orientation or ways in which sexual orientation couples with other identity characteristics to create intersectional bias. This may be because there were only small numbers of members of the LGBTQ community as compared to the total sample, and because intersectionality based on sexual orientation was not the focus of the study, and so direct questions were not asked on the topic.

¹⁴⁹ For more on intersectionality, see Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, *supra* note 30; Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, *supra* note 30.

that are focused on solutions. These data from women and men legal academics invoke strategies that have been effective in particular instances that others could employ to attain similar positive results.

Destiny has two suggestions from her own experience as a Black woman in legal academia. First, she says her school has been working on “changing our meeting times to make them in the middle of the day” instead of at 4:00pm as they had been for years. Why would that make a difference? She explains:

Well, guess what? Half the women disappear at 3:00! A couple of the men did as well, but almost all the women would disappear and . . . that is significant [because] when it came to decision-making, [women] were just not present because we were off picking up kids from school or taking them some place or that sort of thing.¹⁵⁰

Thus, simply changing meeting times to accommodate the personal realities of many faculty members is one small structural change that could lead to much greater inclusion, both symbolically and actually.

Destiny highlights another often-unrecognized challenge for women: teaching on Mondays. Even in academia, women remain the primary caregivers for children.¹⁵¹ During the traditional Monday to Friday workweek, most children of academics are in day care or school.¹⁵² Destiny notes, “If you work Monday you have to prep probably on Sunday,” which is challenging for most women since schools/day cares tend to be closed. The result is that many women are often “up late on Sunday nights trying to prep for our classes” while the kids are asleep. An alternative structural solution that takes these realities into account would be to give parents the option of teaching on Tuesdays or later, so they could “have four or five hours to work” on class preparation every Monday without “the young people underfoot.”

While family-friendly scheduling of meetings and classes can make a difference, additional changes are needed if women are to have a true voice at those very meetings, as they too often complain of silencing and invisibility on the campus as a whole and in faculty meetings in particular. Recall Abigail’s recollection of her early days in law teaching when her male colleagues expected their female faculty colleagues to

¹⁵⁰ Lest these women stand accused of working less than a full time day or somehow shirking their professional duties, many women in the DLA sample note that their workdays resume again for many hours around 8:00 or 9:00pm when their children are in bed.

¹⁵¹ See Mason et al., *supra* note 126.

¹⁵² Some participants in the DLA study with very young children engaged nannies or babysitters instead of or in addition to relying on day care or school.

take notes at faculty meetings—essentially relegating them to the role of secretary rather than equal faculty members. Abigail notes that the practice “has abated” at her institution in part through the hard work and persistence of one of her white male colleagues. She says that 20 years ago, when this practice was rampant, “he would say, ‘Hey, why are we all looking at the girls? I’ll take notes [today]. Next time, John, you can take notes.’”¹⁵³ True, his speaking up could be considered a form of “mansplaining,” but it got the job done, removing secretarial work from the realm of female faculty members to rotate among the men in the room or at least be spread equally between all faculty colleagues. Allies participating in educating white male colleagues can thus be particularly effective.

It is especially necessary for law school administrators to take note of the horrific examples of gender discrimination plaguing law schools, from outright sexual harassment to other means of creating a hostile or unfriendly work environment for women. All law schools should have sexual harassment policies in place, including zero tolerance for violations. There should also be clear reporting requirements and guidelines to ensure that the documented silencing of women does not work against reporting efforts. In fact, many colleges and universities around the country that have recently been criticized for their lack of reporting and enforcement mechanisms to prevent sexual harassment and sexual assault on and around campus have quickly intensified efforts to comply with Title IX.¹⁵⁴ Law schools should follow their lead before the U.S. Department of Education targets them for their lack of compliance with federal law.¹⁵⁵

B. Combatting Discrimination in the Classroom

“I use a lot of skills of being a mother: very sweet, very nice, very nurturing, but switching at a moment’s notice and letting them know there is no messing around in my class and these are my expectations. And also I take a very feminine approach to it; it’s about establishing relationships where they don’t want to let me down.” -Eliana

¹⁵³ Note that even this white male defender and educator referred to his female colleagues as “girls”!

¹⁵⁴ For instance, “55 colleges and universities nationwide [are] under scrutiny by the U.S. Department of Education for [their] handling of reported sex crimes on campus.” Jack Flynn, *Amherst College, Responding to Federal Title IX Probe, Cites Major Improvements in its Handling of Sexual Assault Complaints*, MASSLIVE (May 1, 2014, 7:12 PM) http://www.masslive.com/news/index.ssf/2014/05/amherst_college_responding_to.html.

¹⁵⁵ This Article does not seek to expound on the requirements of Title IX; it is mentioned here only to emphasize the real threat that federal authorities could intervene to ensure compliance.

In spite of their many positive interactions with students, female faculty of color also endure challenging classroom confrontations, especially from white male students. Existing literature has documented how many of these faculty members enter the classroom with a presumption of incompetence working against them.¹⁵⁶ Some faculty members have devised creative strategies to combat these classroom challenges on their own. Yet, individual efforts are not enough; broader structural support, following the lead of the institutions discussed below, is also sorely needed.

1. Individual Strategies: Over-Preparation, Confidence, and the Art of Gender Judo

Many female faculty of color respond to anticipated or real student confrontations in the classroom by working harder than they thought possible, mastering the material before they even enter the classroom in order to combat the presumption that they are not qualified to teach. Hannah, a multiracial woman, believes she “had to do more to prove that I knew what I was talking about than I would if I were a white male. I firmly believe that.” Hannah recalls being “challenged” in the classroom frequently, especially when she first started law teaching, and the challengers “tended to be white men, absolutely.” In order to prove her competency, Hannah took to “infusing references to things that demonstrated the depth of my knowledge.” For instance, she made sure to mention her prior, prestigious, corporate law practice and specifically drew from her practical experience when discussing particularly difficult material in class. While many law professors mention prior practice and share practice-related insights in class, Hannah did so specifically in order to “demonstrate the kind of work that I was working on and that it directly related to what I was teaching them.” In this way, she could assert her competence and prove to her students that she was qualified to teach them, at least for this particular subject.

Similarly, a Latina named Armida believes that “it’s all about credentializing yourself,” especially to gain legitimacy with the “white males” who tend to challenge her in the classroom. Thus, she suggests the following as “a tactic you can employ” sometime “at the beginning” of the academic year: “incorporating in the conversation [past] experience from a

¹⁵⁶ See generally PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, *supra* note 25.

large law firm. That impresses them [and] gives them a value in me. [They think,] 'Sullivan & Cromwell, that means that she's smart.'"

A Black senior female named Brianna suggests that it may not be enough to "know the stuff inside and out," or reveal previous prestigious work experience. Hannah's experience makes this clear, because in spite of her hard work and over-preparation, she was still frequently challenged in class. Even her attempts to prove her competency were not met with complete respect. Brianna notes that because "people of color and women in particular don't get the benefit of the doubt" that they are experts and know the material well, "over-preparation is the norm" for them. She believes that older, white, male professors "can walk in with old crusty notes and not have really innovated their classes in a lot of different ways and can not be on the top of their game on any given day," and students will not punish them for their lack of preparation because they at least look like what the students expect in a law professor. Of course, women of color law professors are not "afforded that luxury," and therefore have to work much harder to earn and keep their students' respect.¹⁵⁷ Brianna explains that while you "have to know your material," it is equally important to "exude a confidence [through] a classroom persona." She warns that female faculty of color who do not "go into that classroom and command that classroom" meet "students [who] sense vulnerability [and] will devour you." Thus, it is not sufficient to prove competency by mastering the material; women of color must also exude confidence to be believable as law faculty members.

Eliana is a Latina who started a tenure-track position only recently. Yet, like Brianna, she "spent so much time" anticipating classroom challenges and developing strategies to avoid or combat them. Perhaps because of this, during her first year in law teaching she "never had a student challenge me." Eliana provides many of the same suggestions as Brianna; for instance, "I immediately come in with a lot of authority, with a lot of telling [the students], 'These are my credentials.' 'This is why we are doing this.'" If any issues arise, Eliana "use[s] humor" to neutralize tension, and also "a lot of skills [from] being a mother: very sweet, very nice, very nurturing, but switching at a moment's notice and letting them know there is no messing around in my class and these are my expectations."

¹⁵⁷ This Article does not suggest that most white male law professors are not innovative or excellent teachers; the inclusion of Brianna's quote is simply to highlight a pattern in the data identifying the opportunity for older white male professors to rest on their laurels (even if they are not doing so), while women of color rarely have laurels available.

She describes this as her “feminine approach” to teaching, where the focus is on “establishing relationships where they don’t want to let me down” and believes this is why “students work really hard in my class.” In fact, researchers would characterize Eliana’s strategy as an example of “gender judo,” defined as the purposeful decision to “take feminine stereotypes that can hold women back—the selfless mother and the dutiful daughter, for example—and use those stereotypes to propel themselves forward.”¹⁵⁸ In spite of her success in employing gender judo, Eliana realizes that it “takes a lot of energy” for her to utilize this approach, “versus a white male colleague” who she believes would not have to strategize about asserting classroom authority and work as hard to maintain it.

2. Structural Suggestions: Mentors, Allies & Administrative Support

In addition to individual attempts to combat bias, some schools have found ways to offer structural support to faculty with regard to their teaching. Most do not target these efforts at improving the experience or the retention rates of female faculty of color, though they tend to have that effect. For instance, some schools offer new law teachers a “light load” in the first year or semester, where they teach just one class during their first semester and one or two during their second semester (at schools where the standard may be two classes per semester). This allows new faculty to ease into the law school environment and especially into class preparation. When Abigail, a senior white scholar, first started teaching, she says her school “didn’t, as we do now, allow our first year, first semester teachers to have a light load.” As a result, she recalls, “I taught four courses my first year, Torts I [and] Criminal Law in the Fall [then] Constitutional Law and Torts II in the Spring.” She clearly had no opportunity to ease into law teaching; in fact, during her first year on the faculty, she “had two-thirds of the [entering] class” of students in at least one of the “four huge classes” she was assigned to teach.

The “light load” may be especially important for women of color, as class preparation for this group refers not only to mastering the substantive material they plan to teach, but also the pedagogical approach and detailed strategies they will

¹⁵⁸ Joan C. Williams, *Women, Work and the Art of Gender Judo*, WASH. POST (Jan. 24, 2014), http://www.washingtonpost.com/opinions/women-work-and-the-art-of-gender-judo/2014/01/24/29e209b2-82b2-11e3-8099-9181471f7aaf_story.html.

employ to keep the class on track. For instance, a multiracial faculty member named Hannah is especially appreciative of the structural support she has received at her school. For all new law faculty members, in their "first year and the first semester, fortunately, we have a lighter load, so my introduction was merely preparing one class, and then the second semester I prepare[d] two." This gave her the freedom and flexibility to spend considerable time on class preparation, noting that in her early years of law teaching, she "basically was working [the equivalent of] large law firm hours" in order to master the material and present a fully competent self in class, in part because she is motivated to be "as good as I can be for my students."

While Hannah did work hard, she also credits mentorship and faculty support for improving her teaching. She notes, "Fortunately, there are two other professors here that teach [my first year course] on a regular basis, and one of them used the same textbook [as I did]. The other one has been teaching for probably something like 30 years." While her school did not have a formal mentor program in place to connect her with these senior scholars, they had an informal open-door policy to encourage new faculty to feel comfortable approaching them for counsel. Hannah readily took advantage of the welcoming atmosphere at her school and especially the encouragement she received from those teaching in her subject area, and "would regularly just shoot them questions about the questions a student had, and I thought I had the right answer, but I wanted to make sure." Thus, rather than avoiding her colleagues because they looked down on her, believed her to be ill-prepared, or were jealous of her accomplishments, Hannah was in an environment where she was made to feel comfortable reaching out to her colleagues for reassurance that she had the right answers and was well prepared to respond to her students. She would also ask these mentors directly, "How would you present this material?" And I would get back answers," rather than snarky comments or hostility. Hannah was actually so comfortable asking for help that "sometimes I would just stop them in the hallway and ask them questions too." All of these efforts at connecting with faculty, seeking out advice, and taking suggestions paid off. In spite of some challenging classroom confrontations from white male students, Hannah persevered, eventually earning two teaching awards in less than a decade of law teaching.

Mentorship does not necessarily involve a shared race or gender identity. Many of the women of color in the DLA sample

noted the ways in which white men and white women with positions of power sponsored or supported them, especially when they first entered legal academia. For instance, an Asian American named Vivian says the following of her mentor relationship with a senior white female scholar:

She's my . . . strongest ally. [T]hat relationship has been absolutely pivotal for me here. She was the Associate Dean when I got hired. She was my go-to person when I don't know what to do about something.

Although "most of my colleagues are white" and Vivian maintains "an arms-length relationship" with many, based in part on the distrust discussed earlier,¹⁵⁹ her relationship with this particular mentor has flourished; it is obviously not based on a shared racial identity, though she says specifically, "other stuff trumps race."

There are instances during which administrators took an active role in protecting and safeguarding the careers of vulnerable faculty, where they stood up for the faculty they had hired. Sometimes this was as simple as communicating openly with female faculty of color about student complaints or issues; other times, administrators simply refused to accommodate the outlandish demands of complaining white students or made clear to students that they believed in and supported these often marginalized faculty. In her first semester teaching, a white woman named Madison "ended up having one student who is notoriously difficult [which] made the day-to-day class more challenging." However, because Madison "had the full support of the faculty," it was "easier to manage" since she never felt she was dealing with his disruptions all on her own. In fact, at some point, "the Associate Dean did end up intervening and having a chat" with the problem student to get him in line. Unfortunately, even this basic level of support is the outlier rather than the norm in legal academia.

Lack of administrative support is much more common, leading the faculty members under attack to become further marginalized. Laila, a Middle Eastern female, was not told about numerous student complaints regarding her teaching in a timely fashion, when she could have worked to address them. When the Associate Dean finally conveyed student concerns months later, Laila recalls him saying, "Yeah, I think they said you were really mean, humiliating and degrading." She was shocked, but explained the situation, detailing how one of her

¹⁵⁹ See *supra* Part II.A. for more on the distrust lurking behind the mask of civility in faculty relations.

students consistently challenged her in class in various ways: interrupting her lectures, announcing that the professor "was wrong" on particular points of law, and even walking out of class during lecture instead of at the scheduled break time.

When Laila forcefully asserted her authority over the class, publicly telling the student that this sort of behavior was unacceptable, her attempted solution backfired and "created a huge chill among the class." She did not realize then that it would go beyond momentary tension. At the time, she was afraid to discuss the situation with colleagues or administrators because "I didn't want to be perceived [as if] I didn't have control over the classroom." Even years later, she believes that had her Associate Dean told her about it earlier, "maybe I could have had a discussion with them" to resolve what she had not realized was an ongoing student concern. She also realized later that the administration had not positioned her in a way to make a smooth transition into law teaching by giving her a light course load or small seminars to teach; instead, though it "was my first semester teaching [they] gave me two sections of Torts, so of course I'm not going to get professor of the year." Overall, she was concerned that the administration was "looking at all the negative things" that students said, not allowing her the opportunity to share her side of the story, and "giving the students way more credit" than they deserved, while also "completely ignoring the things I was accomplishing." Thus, the administration not only set her up to face great challenges by giving her two large first-year classes to teach during her first year on the faculty, but in taking the students' side, they also further marginalized and devalued Laila's competency as a legal academic.

Alicia, a Latina faculty member, had a white male student who was "very hostile" toward her during her first semester as a law professor. That student complained to one of Alicia's "white male faculty member" colleagues about her pedagogical approach and demeanor. Rather than defend her to the student or suggest the student talk with Alicia directly, Alicia's colleague promptly "assumed that of course the student was correct in his complaints." When Alicia's white male colleague later approached Alicia to discuss the situation, it was as an advocate for the student, speaking on his behalf. For Alicia, the "unfortunate circumstance of this faculty member taking the student's side is that [it] empowered the student to act out even more" in class, which in turn led other students to get more comfortable challenging her as well. Ultimately, she

had “a little cabal of problematic students that I then had to manage” throughout the semester, disrupting her teaching and ruining the learning environment for all students. Just as with Laila’s example, Alicia’s challenging situation could have been nipped in the bud with the proper administrative support; instead of taking her side outright or discussing the situation with her in an open-minded fashion, her colleague sided with the aggrieved student, complicating circumstances further.¹⁶⁰

CONCLUSION

“[I]f you would like a woman of color on your faculty, then you have to go and hire a woman of color. You can’t [simply] hope a woman of color comes your way.” -Ryan

As a formal quantitative and qualitative national study of law faculty, DLA reveals the current climate in legal academia, and the unique challenges facing women of color. The environment creates obstacles for women of color law teachers that inhibit not only their success, but student learning as a whole. The good news is that legal institutions can employ strategies to combat these challenges and level the playing field so that law faculty from all backgrounds can succeed and students can focus on law school learning.

Many faculty members appreciate their colleagues and their work environments, though they worry about the bias and enmity lurking just below the mask of collegiality. Gender discrimination, from silencing and invisibility to outright harassment, plagues white women and women of color alike. Interactions with students are similarly varied, and similarly infused with both racism and sexism.¹⁶¹ Individual faculty members from all racial backgrounds, including men and women, report positive relationships with students. Yet, women

¹⁶⁰ Alicia ultimately decided to talk with her colleague not only about how his interference may have undermined her authority in the classroom, but also thereby worsened her classroom situation. She used scholarship to connect with him, because when she first approached him to discuss the situation, “I said, ‘We need to talk about what happens in the classroom to women of color and I need you to read this article.’” To his credit, he did and a productive discussion followed. This could be seen as another individual strategy that others could employ, educating their peers about their experiences in legal academia so that they understand the unique challenges, and perhaps will sympathize and take them into consideration come time for tenure or promotion review.

¹⁶¹ LGBTQ individuals, disabled individuals, and those from various socioeconomic backgrounds participated in the DLA study. These background characteristics were not presented or discussed in this Article in part to protect anonymity of participants. However, these salient characteristics likely have an effect on interactions as well, including marginalized populations suffering “othering” among faculty and challenges from students.

faculty and especially women of color endure disrespectful classroom confrontations from particular students.

Contemplating these challenges and opportunities collectively, it seems clear that legal academia is long overdue for broad structural change. While legal academia currently confronts a number of external challenges, it is past time for these institutions of higher learning to also do some internal soul-searching.¹⁶² Many changes should be swift and dramatic. For instance, law schools should immediately institute policies to safeguard against ongoing gender bias and sexual harassment. There should be zero tolerance for student-initiated, disrespectful confrontations in the classroom, which not only harm the law professor, but are disruptive distractions from learning for all students. Administrative support, rather than acquiescence or collaboration with student detractors, is also crucial to ensuring the success of all law professors and the students they seek to teach.

Other changes may have to be more subtle or gradual. How can administrators offer support to women of color so that they might improve student-faculty interactions? When faculty members demonstrate that women of color faculty are competent, experienced, and respected colleagues, rather than belittle or silence them in public and private, students may follow their lead. When the administration stands up for white female faculty and both male and female faculty of color, rather than siding with students, that too sends a clear message that these nontraditional faculty are nevertheless valued, warning students against future transgressions.

What follows is a list of specific proposals that administrators and faculty who are seriously committed to improving the experience of all law faculty and law students can adopt to move in the direction of more equality-based and equity-focused institutions:

- Loudly and proudly advertise not only a presumption of competence, but a presumption of excellence for all faculty
- Create formal mentoring programs that are subject-specific for new law faculty regarding both teaching and scholarship

¹⁶² External challenges currently facing legal academia include declining admissions rates, shrinking faculties and faculty budgets, and forced changes to curriculum and pedagogy. See, e.g., TAMANAHA, *supra* note 67, at 162-63; Herrera, *supra* note 67, at 209; Ernde, *supra* note 68; Jones & Smith, *supra* note 4; Schrag, *supra* note 67, at 407-08; .

- Cultivate an environment conducive to informal mentoring so that new law faculty can connect with senior scholars in a safe environment without judgment or tension
- Support law faculty in any challenges from students; while we must all be open to critique and willing to recognize our errors, give faculty the benefit of the doubt instead of readily agreeing with student complaints that confirm existing race/gender stereotypes
- Adopt a zero-tolerance sexual harassment policy defining violations and clarifying the appropriate reporting mechanisms as well as harsh penalties for violations
- Require participation from all faculty members in annual racial and gender equality trainings/workshops
- Discuss creative solutions for institutional housekeeping so that note-taking and other internal administrative requirements rotate equally among all faculty
- Reward extraordinary service commitments, including significant outreach to students, with decreases in other service or teaching obligations

This list should not be seen as exhaustive, or a panacea that will eliminate all vestiges of racism, sexism, and the intersection of the two in the legal academy.¹⁶³ In fact, when the DLA participants were asked for their own suggestions for how to improve diversity in legal academia, some of the most thoughtful responses came from those making clear that there was nothing new to suggest. For instance, an Asian American woman named Surya notes, “I honestly don’t think the problem is that administrators don’t know what they can do.” Her perspective is that many do not feel it is important to diversify the faculty in the first place, again suggesting diversity may be a “surface” value rather than a “core” goal for many institutions.¹⁶⁴ A Black faculty member named Ryan offers a particularly poignant suggestion: “[I]f you would like a woman of color on your faculty, then you have to go and hire a woman of color. You can’t [simply] hope a woman of color comes your way.”

This Article and the DLA data overall are more hopeful about the possibilities for and likelihood of change. Outreach, support, and a willingness to engage with underrepresented legal scholars would go a long way toward improving retention rates for faculty. As Isabella, a white woman, notes, to retain diverse

¹⁶³ For more strategies to combat institutional bias, see Yolanda Flores Niemann, *Lessons from the Experiences of Women of Color Working in Academia*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA*, *supra* note 25, at 446-99.

¹⁶⁴ See Lee, *supra* note 108, at 479-80.

faculty, "you have to make the work environment a friendly enough place that someone wants to be there." Thus, the proposals above will only truly be effective when coupled with a sincere desire to diversify the faculty, to recruit and retain white women, women of color, men of color, and others from non-traditional and traditionally underrepresented backgrounds.

The DLA data reveal that marginalized faculty members are coping as best they can, creating strategies in the hallways to navigate difficult interactions with colleagues and in the classroom to guard against or respond to student confrontations. However, greater structural support is necessary to meet the identified structural challenges. We cannot expect individuals to fight alone against structural bias and win.

The real winners in a legal academy free of institutional bias are not only those facing that bias now, but also other faculty members who could learn and grow through respectful interaction with their colleagues. Students of color would be better served as well without the distractions of classroom confrontations and other challenging interactions on campus. Yet, since structural diversity (e.g., an increase in the number of underrepresented faculty) does not lead automatically to interactional diversity (i.e., meaningful cross-racial interaction), we must do more than diversify our faculty.¹⁶⁵ While ensuring critical mass is a necessary first step, for law schools to live up to their full potential, the environments must be such that faculty see each other as equals and are comfortable interacting with one another. When that happens, the legal profession as a whole comes out ahead.

¹⁶⁵ Deo, *supra* note 19, at 82-3, 85.