STUMBLING BLOCKS AND STEPPING STONES: NEWCOMERS' GUIDE TO PERILOUS TERRAIN IN LAW SCHOOL

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> We must challenge, on a daily basis, the myriad ways in which law schools serve to alienate, indoctrinate, and debilitate students. Law school need not be the most degrading and anesthetizing experience of our lives. It's *our* tuition dollars, *our* careers, and *our* intellectual and emotional investments that are at stake. We are the "grassroots" of the law schools; we must take part in the struggle against the reproduction of hierarchy fostered by our institutions.[1]

> Each is given a bag of tools,
> A shapeless mass and a book of rules,
> And each must make, ere life has flown,
> A stumblingblock or a steppingstone.[2]

Introduction

The glamorous life of the lawyer! Overworked, overpaid, overdressed, overwise—who among us can resist such a media-enhanced image? As statistics in the past ten years demonstrate, the recent rush toward the profession has marked a dramatic turnaround. In 1988, 66,000 applicants were reported to be competing for 41,000 places in law schools.[3] In 1989, California reported eleven applicants for each law school slot in the state.[4] Yet, until as recently as 1986-87, the number of people taking the LSAT had been dropping fairly steadily over a twelve year period.[5] There

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1. Worden, *A Student Polemic*, 16 N.M.L. Rev. 573, 574 (1986) (footnote omitted).

2. Attributed to R.L. Sharpe (ca. 1890) in Familiar Quotations (J. Bartlett ed. 1968).

3. Wise, *Sixty-six Thousand Applicants Compete for Forty-one Thousand Places*, 200 N.Y.L.J. 1 (Aug. 24, 1988).

4. Kostal, *Law Schools Around State Had Their Pick of Entering Students with Higher Scores*, 102 L.A. Daily J., Sept. 25, 1989, at 1, col. 6.

5. *See A Review of Legal Education in the United States, Fall, 1988: Law Schools and Bar Admission Requirements*, 1989 A.B.A. Sec. Legal Educ. & Admissions to the Bar 66.

have been qualitative changes as well. Women and people of color are entering law school in growing numbers, as are members of other "newcomer" groups.[6] The relative monopoly formerly enjoyed by white, affluent male law students has begun to crumble.

With the arrival of these newcomers, a new wave of criticism of legal education is emerging. In the past, student complaints, if expressed at all, tended to come within the *Paper Chase*[7] mystique—too much work, too little sleep, too much stress, and not enough social life. Such reactions tended to be viewed with bemused toleration by professors and administrators, who perceived such grievances as a means for letting off steam, rather than as actual attempts to bring about substantive change. The promise of the rewards associated with the attainment of professional status was considered adequate compensation for annoyances endured en route.

Recently, however, an increasingly vocal number of critics, including both students and educators, has begun to object to consequential matters such as classroom dynamics, the inflexible and sometimes irrelevant nature of the curriculum, overt and covert discrimination both in class and in the overall law school setting, and the absence of diversity of gender, ethnicity, and viewpoint among the faculty.[8] A comprehensive empirical study conducted by the authors at the Boalt Hall School of Law in 1988 indicates that women and people of color, despite their increasing numbers, experience the adverse effects of traditional legal education in signifi-

6. *See id.* at 66-68. The statistics for the 1988-89 academic year (at reporting schools) show a total of 14,295 students of color enrolled, as compared to 9,952 in 1978-79. The statistics for women indicate that 35,775 women were enrolled in law school in 1978-79 while 50,932 were enrolled in 1988-89. The total law school enrollment for 1978-79 was 121,606; the total enrollment for 1988-89 was 125,870. *Id.*

7. J. OSBORN, THE PAPER CHASE (1971).

8. Volume 38 of the *Journal of Legal Education* presents a collection of essays that cover many of the substantive objections expressed by women to the law school setting and curriculum. *See also* Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW (D. Kairys ed. 1982); Frug, *Re-reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U.L. REV. 1065 (1985); Getman, *Voices*, 66 TEX. L. REV. 577 (1988); Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163 (1988); Worden, *Overshooting the Target: A Feminist Deconstruction of Legal Education*, 34 AM. U.L. REV. 1141 (1985).

For articles concerning problems confronting law students of color, see Bell, *Law School Exams and Minority-Group Students*, 7 BLACK L.J. 304 (1980); Neely, *Minority Participation in Legal Education: Innovative Approaches Toward Racial Parity*, 20 U.S.F. L. REV. 559 (1986); Skillman, *Misperceptions Which Operate as Barriers to the Education of Minority Law Students*, 20 U.S.F. L. REV. 553 (1986).

cantly higher percentages than do their white male counterparts.[9]

Rather than merely accepting passive roles in the rite of passage associated with legal education, many students and educators are actively exploring ways in which they can effectively voice their criticisms, sensitize faculty and administration to their views, and create changes in the law school environment that respond to these newly articulated needs and goals.

The task is not a simple one. As entering law students, most of us had little perspective on what was happening. We may have known we were dissatisfied and unhappy, but we had not yet had the time to identify specific causes other than work-overload and the difficulties of learning legal reasoning. Accustomed to an academic environment in which most of us had performed well, we tended to accept institutional judgment, blaming ourselves for any difficulties rather than blaming the legal educational structure. For many, self-blame was combined with the rationale that we were "just passing through" and did not wish to become involved in the politics of legal education.

Even when we did develop some critical perspective on the educational process—generally at some point after the first year—it was still difficult to apply that insight to the initial formulation of a persuasive agenda for change in the law school setting. A prime example of this is the movement for faculty diversity that has developed at many schools. Begun as a grass-roots student movement in 1987-88, it has grown to nationwide proportions. Today, literature on diversity issues is readily available from a network of student organizations, and support is easily accessible for those who wish to question current faculty hiring policies. Equally important, these demands for diversity have broadened; the demand for an increase in the numbers of women and people of color hired has expanded to encompass diversity of perspective as well as demographic characteristics. For example, a recent attempt by the Boalt administration to hire a married couple sparked angry responses from students. The students perceived no gain in diversity because the woman's conservative economics-based approach merely echoed a view already common among existing faculty.[10]

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9. For a complete report of the findings from the Boalt study, see Homer & Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-1990).

10. Several students, finding themselves excluded from the hiring process, cut through

Despite its success, the faculty diversity movement, like other less well-developed student causes, has faced formidable resistance from the law school establishment itself. Although the student body has diversified somewhat, new student perspectives do not tend to play a significant role in the formulation of administration policies and practices. The hierarchy of authority is rigorously guarded, and all students are expected to submit to the prevailing wisdom. Faculty, particularly those who have taught a set course for a number of years, are unwilling or unable to anticipate and accommodate points of view that they have never before encountered and do not understand.[11]

The persistence of the movement for diversity, despite the entrenched academic resistance to it, illustrates the power that students can wield. Newcomers especially must find ways to transform institutional stumbling blocks into stepping stones. As students, we possess the energy and originality of perspective essential to make change. For most of us, the paths we have chosen have rarely guaranteed solid footing. To use Mari Matsuda's concept, when the terrain is perilous, it is necessary to plow up the ground and rework it.[12] The job may be labor-intensive, but it is ultimately the liberating choice that allows us to regain our balance and to move forward with confidence and pride.

This essay was written with several purposes in mind. Its primary focus is on newcomer student empowerment. First, we examine the new "outsider" legal perspectives and demands for change in the profession that are emerging in the scholarly literature.[13] We then explore the application of these ideas to the law

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traditional protocol and personally wrote to the couple, urging them not to accept the school's offer of employment on the grounds stated. This example of simple and direct student activism is reported in greater detail in the Bay Area legal newspaper, the Daily Journal, San Francisco Banner, Jan. 25, 1990, at 1, col. 3.

11. *See* Trubek, *Where the Action Is: Critical Legal Studies and Empiricism*, 36 STAN. L. REV. 575, 585, n.27 (1984) (discussion of the obstacles faced by scholars who wished to introduce alternative approaches into legal scholarship). *See also* Abel, Book Review, 26 STAN. L. REV. 175 (1973) (reviewing M. RHEINSTEIN, MARRIAGE STABILITY, DIVORCE AND THE LAW (1972)) (providing an exhaustive treatment of the failure of law books to adequately critique the legal system).

12. Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L.J. 1 (1988).

13. *See generally* Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382 (1989); Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Delgado, *The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561 (1984); Matsuda, *supra* note 12; Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*,

school setting. We argue that although these ideas are enormously valuable in raising student consciousness, their nontraditional perspective is likely to be inadequate to persuade those in power of the need for institutional change. We then suggest a number of ideas for using conventional research methodology to support newcomer claims. Finally, theory and data in hand, we consider ways in which positive change can be encouraged in the law school setting.

I. Law Student Empowerment

> By 'just doing time [in law school],' you lose the opportunity of learning to work with the law critically and of developing it as a useful political tool; you may also begin to entrench yourself in a pattern of assimilation that will become harder and harder to break. Pressure to assimilate is far stronger "out there" than it is in law school; if you can't/don't challenge it now, what makes you think you'll be able to do so later?[14]

Our first task as newcomers is to develop a consciousness of what is happening to us in our own legal educations. Merely experiencing personal dissatisfaction with or alienation from the traditional law school experience does not guarantee the ability to create social or institutional change, although it does provide a valuable impetus. Only when we begin to understand the nature of our experience can we translate it into social action.[15]

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11 Women's Rts. L. Rep. 7 (1989); Skillman, *supra* note 8; Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 Mich. L. Rev. 2128 (1989); Williams, *On Being the Object of Property*, 14 Signs 5 (1988).

14. Worden, *supra*, note 1, at 577.

15. A number of different movements suggesting critical analyses of traditional legal theory, education, and practice have developed in the past two decades. Prominent among them are the Critical Legal Studies movement, feminist jurisprudence, and the newly emerging outsider scholarship, which is based on the perspectives of people of color, women, and others who do not conform to the male Anglo-Saxon norm associated with lawyers in America.

Although the emerging feminist jurisprudence movement has been primarily theoretical in its emphasis, it has provided a strong context for women to evaluate their experience. Works of particular interest include: C. Gilligan, In a Different Voice (1982) and Menkel-Meadow, *Portia in a Different Voice*, 1 Berkeley Women's L.J. 39 (1985).

The Critical Legal Studies movement (CLS) represents an effort on the part of various legal scholars to understand legal ideas and institutions in context and in action. CLS developed out of an earlier movement called American Legal Realism, which attempted to transcend legal abstractions and look at what actually occurs in legal life. This resulted in some interesting empirical studies on the relationship between legal doctrine and practice. For an overview of the CLS movement, see Gordon, *Historicism in Legal Scholarship*, 90 Yale L.J.

A. Insight from the Outside: A New Model

An abundant source of ideas, energy, and support for such consciousness-raising can be found in the spirited movement that is currently developing in academic legal circles. A number of scholars, primarily women, people of color, and members of the Critical Legal Studies movement,[16] have begun to experiment with a model in which members of the legal profession (including law students) are divided into two categories. The "insiders" are those white, affluent males who have until recently monopolized the teaching, scholarship, and practice of the legal profession. In contrast to these individuals are the "outsiders," those relatively recent arrivals in the legal profession such as women, people of color, members of the working class, gays and lesbians, returning students, and other members of "minority" groups.[17] In this essay, the term "newcomers" is used interchangeably with "outsiders."[18]

1017 (1981), and Schlegel, *Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference on Critical Legal Studies*, 36 STAN. L. REV. 391 (1984).

Although the CLS movement itself is resistant to generalizations, it would probably be safe to state that CLS scholars attempt to expose the assumptions underlying almost all legal doctrines, including judicial decisions, policy, and traditional scholarship, and to examine their effects on social consciousness. CLS scholars typically critique existing legal systems in order to encourage transformative political action. David Trubek has written that "[t]he ideas upon which CLS rests—notions about relationships among the ideas we hold about law and society, the structures of social life we are engaged in, and the actions we take—present a challenge to current legal scholarship as well as to the organization of American society." Trubek, *supra* note 11, at 1.

Among CLS scholars, Duncan Kennedy has perhaps paid the closest attention to legal education. His salient observations about the peculiar pressures experienced by law students make fascinating reading, although he has been criticized for offering an analysis that hinges exclusively on the professor's perspective. *See* Kennedy, *supra* note 8.

16. *See* sources cited *supra* note 15. *See also* Gordon, *Law and Ideology*, 3 TIKKUN 14 (Jan/Feb 1988); Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School,"* 38 J. LEGAL EDUC. 61 (1988); Worden, *supra* note 1.

17. Mari Matsuda, Patricia Williams, Richard Delgado, and Derrick Bell are among the most widely recognized authors of outsider scholarship, although many others are involved in this growing movement.

Outsider scholarship is predicated on the notion that all women and people of color in America have experienced some form of oppression or discrimination and that this experience causes us to view the world with a perspective that differs greatly from the white male view. Rather than attempting to ignore or deny these differences, outsider scholars believe that they constitute a valuable contribution to the teaching and practice of law. Despite its overt hostility to the outsider movement, Randall Kennedy's article, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989), brings together the work of most outsider scholars via textual analysis and copious citations.

18. Matsuda uses the term "outsiders" to describe all persons who do not conform to the white male norm of American society. Delgado uses the term "outgroup members,"

"Outsiders," in this scholarly context, is a term of art encompassing diverse backgrounds and perspectives. Many outsiders, such as women of color, may fit into a number of different outsider groups. Technically, outsiders may even share qualities with insiders. The key factor in outsider identification is sensibility rather than demographic status. Thus, for example, many white female law students may consider themselves outsiders, despite the fact that they share upper middle class backgrounds with their male colleagues in the profession. Regardless, their perspective remains substantially at odds with traditional white male normative expectations.

As outsiders, we fail to conform to the traditional and pervasive white male norms in many respects. Some characteristics, such as gender, age, and ethnicity, are obvious and immutable. Other characteristics, such as legal perspective, have been perceived as malleable and capable of being reshaped in the traditional mold. This is where the trouble begins for many newcomers, particularly those who do not wish to alter their views and must therefore struggle to find a way and place to express them in an unreceptive environment. Richard Delgado describes the inability of the traditional legal perspective to accommodate new ideas:

> [It is a] mindset—[a] bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place. These matters are rarely focused on. They are like eyeglasses we have worn a long time. They are nearly invisible; we use them to scan and interpret the world and only rarely examine them for themselves.[19]

He adds the following warning about the loss resulting from the failure to challenge these assumptions:

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which better acknowledges the collective experience shared by many outsiders. We have chosen the term "newcomer" to describe those individuals whose entrance into the legal profession is accompanied by a desire to preserve their unique cultural or social identities. Newcomers are often uncomfortable or unwilling to assimilate the traditional point of view. For example, women have long been represented in the legal profession, but have only recently begun to develop and employ a separate feminist jurisprudence.

To gain some perspective on the changing role of outsiders in the law, see Galanter, *Outside, Inside: Jewish Justice in the Homeless Society*, 14 LAW & SOC. INQUIRY 507 (1989) (reviewing BURT, TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND (1988)), which offers some interesting speculations on the feasibility of outsider perspective within the traditional norm.

19. Delgado, *supra* note 13, at 2413 (footnotes omitted).

> These patterns of perception become habitual, tempting us to believe that the way things are is inevitable, or the best that can be in an imperfect world. Alternative visions of reality are not explored, or, if they are, rejected as extreme or implausible.[20]

Mari Matsuda takes Delgado's notion one step further. She shifts the focus from the circumscribed mindset described by Delgado to the alternative visions that outsiders can provide. Matsuda calls for a new "affirmative action scholarship" that values the experience, beliefs, and knowledge inherent in outsider perspectives, and decries the loss resulting from the exclusion of such views:

> Outsider scholars have recognized that their specific experiences and histories are relevant to jurisprudential inquiry. They reject narrow evidentiary concepts of relevance and credibility. They reject artificial bifurcation of thought and feeling. Their anger, their pain, their daily lives, and the histories of their people are relevant to the definition of justice.[21]

Newcomer law students should especially identify with the challenge offered by Delgado and Matsuda. For many of us, our pre-law school consciousness is still largely intact, although concededly under siege. We are still alert to the struggle to maintain our own identities and to avoid the subjugation of our own experiences and histories to conventional legal reasoning.[22] We still enjoy the luxury to experiment with new ideas, without concern for

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20. *Id.* at 2416-17 (footnote omitted).

21. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. LAW REP. 7, 8 (1989).

22. Duncan Kennedy describes the ambivalence experienced by first-year students as a combination of reactions. These reactions include fear, confusion, and loss of self-assurance resulting from being forced into what he terms "pseudo-participation" in the Socratic process, on the one hand, and satisfaction resulting from performance, competition, and the successful mastery of so many "things that you knew were out there but you didn't understand." Kennedy, *supra* note 11, at 42.

The conflict specifically experienced by women is more poignantly described by Weiss & Melling in *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988):

> Imagine a spectrum with two images at either extreme. At one end sits the image of Woman, embodying qualities associated with generations of women who themselves had little hand in shaping the image. She lacks public power. She serves other people. She is expected to be and often succeeds in being caring, empathetic, cooperative, and generous. At the opposite end stands the figure of Lawyer, as molded by previous generations of men. He is powerful, instrumental, and adversarial. In the middle, vacillating, both attracted to and repelled by each image, we stand.

Id. at 1314.

the reactions of our clients or employers. Most important, we are the future of the law, and the changes we demand in our legal education will affect the future direction of the profession. For this reason alone, the long-term penalty for inactivity by newcomers is likely to outweigh any short-term benefits of compliance with the status quo. By virtue of sensibility, status, and timing, we are captive activists, if not willing ones, and we would be fools not to take advantage of this opportunity to bring much-needed change to our chosen profession.[23]

B. *From Scholar to Student: Bridging the Gap*

Mari Matsuda states that "intellectual inquiry is a valid adjunct to movements for positive social change."[24] She admits that scholars are unlikely to be the vanguard of such change, but defends their work as an important element in creating social transformation. Although directed toward a broader political activism, Matsuda's words also have an immediate meaning for newcomer law students who recognize the need for change in the law school setting.

Like their outsider scholar counterparts, newcomer students tend to feel alienated or displaced within the profession, and in law school specifically. Consider Mari Matsuda's eloquent characterization of the conflict experienced by many outsiders:

> Those outside the traditional center of academia intuit that their personal knowledge—what they hold true and dear, what is real to them—often comes from their life experience

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23. The experience of the authors is a case in point. Prior to entering law school, each of us had worked in educational institutions in positions where we had been expected to use our personal judgment. Unlike some of our colleagues who entered law school directly out of college, we knew from experience that the education/training process has an enormous impact on the end result (job choices and performance). We perceived the three years of law school as a significant block of time rather than a transient period, and we were better positioned to resist the blind momentum that carries many students passively through their legal educations.

Further, we were on the alert against buying into the goal-orientation of law school. We were both sensitive to the losses suffered by those who decline to become involved in their work (or school) environment. We had both observed the problems women had in mechanistically trying to separate one's work (or school) from one's "real" life, and believed that active involvement offered a better solution than withdrawal. To us, student activism represented a choice in favor of the integration of our needs and values, in contrast to attempting to maintain a double life in which personal and professional goals were perceived as mutually exclusive.

24. Matsuda, *supra* note 12, at 8.

> as outsiders. Women report the experience of a different reality, a different morality. People of color find an affinity of knowledge in their separate caucuses that they do not find in predominantly white settings. Knowledge at the academic center, however, stands monumental and unchanged by the separate knowledges groups of outsiders are nurturing at the academic margins.[25]

Matsuda's perspective validates our reactions and responses to law school and our professional training. Matsuda offers insight, empathy, and an opportunity to identify with precisely the type of role model whose absence from the faculty is decried at so many law schools. Here at last in the outsider movement is a group of scholars, teachers, and lawyers who celebrate their differences rather than struggling to subdue them into compliance with traditional norms.[26] Here are people who write about themselves and their views on legal and social issues from a personal perspective which banishes the distant scholarly voice and invites the reader to respond.[27]

The absence of outsider scholarship in the law school curricu-

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25. *Id.* at 1-2 (footnotes omitted).

26. Not surprisingly, this new movement has elicited strong reactions within academic circles. *See, e.g.*, Kennedy, *supra* note 17. What is interesting in Randall Kennedy's defense of the universal scholarly standard is the fact that he is black; thus, although Kennedy's "identity" technically does not conform to the upper middle class white male norm, he employs a scholarly "persona" (or narrator's voice) that largely conceals this fact.

27. The August 1989 issue of the *Michigan Law Review* contains several articles within a symposium on "Legal Storytelling." *See Symposium: Legal Storytelling*, 87 MICH. L. REV. 2073 (1989). Many of the authors are women and/or people of color, including Toni Massaro, Pat Williams, Mari Matsuda, Derrick Bell, and Richard Delgado. The essays not only draw on personal experience, but adopt innovative styles that depart radically from traditional scholarly forms.

It is interesting to contrast the recent work of such scholars with the convoluted and fundamentally indistinguishable scholarly articles produced in a symposium on law and literature at the University of Texas a mere eight years ago. *See Symposium: Law and Literature*, 60 TEX. L. REV. 373 (1982). Participants in the symposium appear to have been exclusively white and male. Each argues for or against a plurality of perspectives, and each is denounced by the succeeding author for having fallen prey to his own cultural limitations. Yet no consideration is ever given to the possibility that true diversity of perspective could only be provided by the participation of women or people of color, and no suggestion is made that scholarship should attempt to depart in any way from entrenched academic methodology.

It should also be noted that the use of personal narrative in the legal literature has not been restricted to the observations of outsider scholars. James Elkins has been instrumental in insisting on the value of the stories told by women law students. *See, e.g.*, Elkins, *On the Significance of Women in Legal Education*, 7 AM. LEGAL STUD. A.F. 290 (1983), and Elkins, *Law School*, 8 AM. LEGAL STUD. A.F. 33 (1984).

lum remains a serious problem.[28] When it is included, its effect can be dramatic. When the authors were second-year students, we took a constitutional law class on first amendment and equal protection rights that must surely go on record as the most ambitious attempt in the history of legal education to freeze-dry an ordinarily fascinating subject. We dutifully dug through a pedantic two thousand page reader of flat judicial decisions and stillborn academic commentary. Toward the end of this ordeal, we were unexpectedly presented with Charles Lawrence's extraordinary essay *One More River To Cross.*[29] In this piece, Lawrence skillfully intertwines a scholarly analysis of desegregation damages and remedies with stories of his own experiences with discrimination as a black student and school principal. The essay, particularly when contrasted with the other one-dimensional course materials, was a consummate example of the enhanced understanding and analysis that grace the outsider perspective. It encouraged us to believe that personal experience, no matter how highly individualized, is an asset rather than a liability in learning to read law.

The benefits derived from the outsider perspective are not limited to scholarly contributions. Newcomer students benefit enormously when they are encouraged to value their personal perspective rather than concealing it. In a recent article, Julius Getman recounts his experience in teaching *State v. Williams*,[30] a case in which a Native American couple was convicted of negligent homicide when they failed to obtain medical attention for their child. He describes his students discussing the case in "professional voice" (*i.e.*, in terms of legal principles) until a black woman student from South Carolina, who rarely spoke, intervened:

> 'I don't know about Native Americans, but I know why black people in South Carolina often avoid doctors.' She then described in moving and personal terms, 'the feeling of being treated like an object and looked at as though you aren't human.' . . . When she was finished, I was struck by two thoughts. First, if she had represented this couple and conveyed the same sense of how they felt, they would not have been convicted. The other thought was how little law school teaches students about the importance of presenting the cli-

28. *See generally* Matsuda, *supra* note 12.

29. Lawrence, "*'One More River to Cross'—Recognizing the Real Injury in Brown: A Prerequisite to Shaping New Desegregation*," in SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION 48 (D. Bell ed. 1980).

30. 4 Wash. App. 908, 4 P.2d 1167 (1971).

> ent's case in the human voice. When I considered the reasons for the deficiency, I realized that many of my colleagues, although brilliant and learned, were not notably proficient in human understanding.[31]

Professor Getman's description arouses many feelings: admiration for this unusual professor who listened so well; identification with the frustration that must have pushed the black woman to speak; and hope that the student's self-confidence flourished as a result of this experience. By speaking out, by claiming her right to offer a different perspective and to insist that it be heard, the young woman had, in short, turned a stumbling block into a stepping stone.[32]

C. *Additional Ammunition: Finding Strength in Numbers*

The last section focused on individual consciousness-raising and the value of trusting one's personal experiences rather than attempting to conform to conventional legal reasoning. The question remains, however, whether this individual (or even group) empowerment is a sufficient goal, or whether institutional change is ultimately required to accommodate the outsider perspective. We believe that institutional change is essential. In this section, we suggest strategies for presenting the best case to support demands for this change.

Clearly, we find outsider theory quite persuasive. We have drawn heavily on it in our own research. We still feel, however, that it was necessary to substantiate outsider claims empirically as well as intuitively. At first blush, it may appear inconsistent to propose the use of a conventional methodology (collection of em-

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31. Getman, *supra* note 8, at 583-84.

32. It is not always easy for students or scholars to insist on the value of their own point of view. Judge Patricia Wald describes her reaction when editors attempted to change her narrative in an earlier scholarly article from an active to a passive voice. She recalls that the editorial board's action implied that it was "too personal, perhaps unprofessional, for an author directly to acknowledge her own ideas." She comments on the role played by law school in creating this constraint:

> [T]he incident makes my point—somehow law schools instill in students from day one the notion that they must disengage themselves from personal involvement in the human aspect of their endeavors. Most learn the lesson; some unlearn it in order to practice, while those who go on to clerkships, teaching, scholarship, and appellate judging too often remain taught.

Wald, *Disembodied Voices—An Appellate Judge's Response*, 66 TEX. L. REV. 623, 627 (1988).

pirical data) in the course of an essay that implies that traditional approaches are inadequate to accommodate outsider perspective.[33] If one's personal experience as an outsider is valuable in and of itself, why should it be necessary, or even relevant, to submit it to a statistical test?

The answer is straightforward. Numbers are ammunition. They document the experience of a large number of students and thus broaden the applicability of outsider theory. In our own research, the data supplied the hard evidence so frequently demanded by faculty and administrators. As lawyers, they have been trained to value empirical data, but it has only rarely been used in recent studies of the law school environment.[34]

At the same time, employing outsider theory to interpret the data has allowed us to challenge traditional beliefs by presenting new insights and explanations in analyzing our data.[35] In short, theory and statistics complement each other. They are not competing approaches. There is no hierarchy of methodology; the optimal

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33. A number of CLS scholars have commented on the latent limitations of empirical research in addressing problems in the legal system. These scholars have observed that this methodology is inadequate to deal with legal structures, that the scope of such an investigation is unavoidably too narrow to reveal any valid information about the legal system overall, and that empirical treatments are inherently conservative and thus represent a poor allocation of limited resources in the field of intellectual inquiry. *See, e.g.*, Kelman, *Trashing*, 36 STAN. L. REV. 293 (1984).

A response to such criticisms is provided in Whitford, *Lowered Horizons: Implementation Research in a Post-CLS World*, 1986 WIS. L. REV. 755. Whitford suggests that abstract CLS insights will not realize their full potential until they are combined with a systematic investigation of the practical realities to better determine how legal consciousness operates.

34. For a selective overview of early empirical work, see Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972); La Russa, *Portia's Decision: Women's Motives for Studying Law and Their Later Career Satisfaction as Attorneys*, 1 PSYCHOLOGY OF WOMEN Q. 350 (1977); Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551 (1973); White, *Women in the Law*, 65 MICH. L. REV. 1051 (1967).

However, the trend had been away from empirical research until interest was revived two years ago by the Stanford and Yale studies. *See Project: Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988) (hereinafter *Project*); Homer & Schwartz, *supra* note 9; Weiss & Melling, *supra* note 22. *See also* Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988) (providing a substantially more limited set of empirical findings).

A number of general studies involving law students have also been undertaken by researchers; for full citations, see Homer & Schwartz, *supra* note 9, at nn.13, 14 & 17.

35. In fact, in our own research, we have generally found a very strong correlation between our data and the theoretical model provided by outsider scholarship. Although there were some contradictions between outsider theory and our statistical results, each approach tended on the whole to strengthen the authenticity and persuasiveness of the other.

approach combines the particular strengths of newcomer/outsider insight with the particular strengths of empirical data. The data provide breadth; the theory provides depth. Perhaps the day will come when simply arguing our different views will be sufficient to induce change; but it does not appear that we have reached that point yet.

Suppose you are a first-year female student who is disturbed by your professor's teaching method. For most of us, this should not require great imagination. You suspect that you are not alone in feeling panicky about being called on and in being deathly fearful of volunteering. You doubt your ability to anticipate correctly what the professor seems to expect you to say, and you are afraid of sounding foolish if you say what you honestly think. This is a new experience for you, as you have always considered yourself articulate and outspoken. If you are particularly intuitive, you may even surmise that this is the fault of the system and not entirely your own failing.

You are a take-charge person, so you arrange to meet with the professor in order to see what can be done to alleviate the misery caused, in this case, by the Socratic method. You describe your personal doubts about class participation and possibly about law school in general. The professor listens; he is considered to be one of the more accessible faculty members. He offers you some generic reassurance about your abilities, adding that the law school would not have admitted you if they were not confident that you would succeed. He ushers you out, reminding you to come see him at any time. You leave his office feeling better about yourself, but the next day you are back in class and nothing has changed. You have received some support, to be sure, but your personal experience has not convinced the professor that it is necessary to change the entire classroom dynamic in order to accommodate your individual—and possibly fleeting—concerns.

Let's consider an additional scenario. You grow tired of waiting for the professor to make changes. You decide to document your own experience by compiling some data concerning the reactions of other students to the classroom methodology. You hand out a simple opinion questionnaire, or you poll students in the class. Perhaps you check with everyone who has been called on over the period of a week to learn their reactions to the experience. You may simply choose to use the Stanford and Boalt survey data that report negative attitudes toward enforced classroom

participation.[36]

Not surprisingly, your findings support your belief that the Socratic method is silencing students rather than drawing them out. You take these findings—and your interpretation—to the students. If you have collected the data yourself, many of your classmates are already aware that something is going on. You organize an informal group meeting or you simply distribute your findings directly to class members. You may enlist the aid of a student organization such as the Women's Association. You make yourself available to discuss your conclusions.

Rather than waiting for the professor to alter his behavior, you suggest that the students alter theirs by no longer passively accepting his teaching technique. Once your classmates are aware of the extent to which others share their feelings, they will be far more likely to act.[37] Of course, you will also want to show the findings to the professor. He looks at your information, and recalls your observations from your earlier meeting with him. Now that he, too, is aware that so many other students share the reactions you described, he is likely to be more responsive. You have produced "hard proof" and law school professors, like practicing lawyers, are trained to take such evidence seriously.

Detractors of such a quantitative approach may agree with Oliver Cromwell's observation that "a few honest men [sic] are better than numbers."[38] Despite Cromwell's sharp distinction, we strongly

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36. *See supra* note 35.

37. In 1988, when we first undertook our two-year study of the differences in the law school experience of students at Boalt Hall School of Law, we began by talking informally with other women. The response most commonly encountered was: "I had no idea other people felt this way. I thought it was just me." We gradually came to understand that the value of our inviting people to speak (and listening to them) was not only to explore and validate their individual experience, but to enable them to discover support within their community. Although it might appear obvious that shared experience and sympathy would exist among subgroups within the student population, this was not always the case, particularly among women.

Commentators have hazarded a number of explanations for the failure of law students and lawyers to identify with their communities within the profession. Mari Matsuda has suggested that women who make their way into law school may be academic "loners" who do not readily turn to their peers for support. We suggest that the first year of law school places such intense demands on individual students to conform, achieve, and compete that they do not have the time or motivation to reflect on the collective nature of their experience. Study groups, rather than providing support, may tend to reinforce the competitive atmosphere.

38. Cromwell, *The Right Choice of Officers*, in A SELECTION FROM THE LETTERS AND SPEECHES OF OLIVER CROMWELL (L.C. Bennett ed. 1941).

believe that the two approaches—personal observations supplemented with statistical verification—enhance each other, both in discovering the nature and variety of students' perspectives and in using that information to educate others. Outsider theory offers a springboard to identify issues that trouble newcomer (and other) law students, and thus assists in both the beginning stages of research (formulation of hypotheses and research design) and the final stages (discussion and interpretation of findings). Empirical research techniques assist in the collection and management of significant data from a broad spectrum of respondents, ensure accurate and reliable statistical analysis, and guarantee concrete evidence as a foundation for one's arguments. This suggests a graphic scheme in which the first- and last-phase application of theoretical concepts braces the central empirical effort. Without the lateral support, the numbers will fall flat. Without the central support, the theory may implode. But when the two are properly joined, a solid structure results that can provide a firm foundation for arguments for political change.

II. Demystifying Empiricism: An Introduction to Social Science Techniques for Law Students

Having (we hope) persuaded you of the utility of fueling your arguments with empirical data, we now turn to the basic skills necessary to acquire such information. The process can be quite simple or quite sophisticated, depending on your resources and objectives. There are numerous texts, handbooks, and other publications available to assist you in designing your research.[39]

Although survey research tends to be the most popular method for obtaining empirical information about people and in-

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39. Valuable resources include: D. Aaker & G. Day, Marketing Research (1990) (a straightforward overview of various methods of collecting data); N. Bradburn, Improving Interview Method and Questionnaire Design (1979); D. Dooley, Social Research Methods (2d ed. 1990) (a more advanced treatment of both practical and theoretical considerations on social research); G. Kalton, Introduction to Survey Sampling (1983) (a statistically oriented analysis of sampling techniques which requires some expertise in the field); J. Kuper, Methods, Ethics and Models (1987) (recommended for supplementary reading); Survey Research Methods: A Reader (E. Singer & S. Presser eds. 1989) (includes topics as diverse as the effect of the interviewer's race on respondents' answers, and the validity of self-reported responses when compared to official records); S. Sudman, Applied Sampling (1976); S. Sudman & N. Bradburn, Asking Questions: A Practical Guide to Questionnaire Design (1989) (a thorough and accessible guide to creating a survey instrument which includes three sample questionnaires, a detailed bibliography, and a useful glossary of technical terms).

stitutions, there are a number of alternative approaches, including the use of census data available from sources such as the registrar's office or the office of admissions, in-depth individual interviews, focus-group discussions, case studies, direct and indirect observation, or any combination of these.[40] Research can be conducted in person, via the telephone, or without any direct contact with your subjects at all, through questionnaires distributed by mailbox, classroom observations, etc.

Existing research has identified a number of issues that may be relevant to your own inquiry. These issues include academic performance,[41] classroom dynamics,[42] curriculum and course materials,[43] self-esteem and adherence to values,[44] balancing personal and professional life,[45] reasons for attending law school,[46] and faculty diversity.[47] Of course, other matters may be more pressing at your own school. Be sure to make your inquiries as concrete as possible.

A. *Survey Research*

The questionnaire is an efficient and cost-effective means of collecting and processing a great deal of data, and consequently tends to be the method most researchers consider first. Questionnaires are enjoyable to design and relatively straightforward to administer.[48] Moreover, law students are generally cooperative respondents.[49] You can collect a great deal of data at one time with a questionnaire and reserve the ability to pare it down as necessary,

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40. For examples of empirical studies, see generally Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137 (1988); Homer & Schwartz, *supra* note 9; Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462 (1972); LaRussa, *supra* note 34; *Project*, *supra* note 34; Weiss & Melling, *supra* note 22.

41. *See generally Project*, *supra* note 35; Homer & Schwartz, *supra* note 9; Weiss & Melling, *supra* note 22.

42. *See* Banks, *supra* note 40.

43. *See* Frug, *supra* note 8; Shalleck, *Report of the Women and the Law Project: Gender Bias and the Law School Curriculum*, 38 J. LEGAL EDUC. 97 (1988).

44. *See* Homer & Schwartz, *supra* note 9.

45. *See Project*, *supra* note 34; Weiss & Melling, *supra* note 22.

46. *See Project*, *supra* note 34; LaRussa, *supra* note 34.

47. *See* Homer & Schwartz, *supra* note 9.

48. For a sample survey, see Homer & Schwartz, *supra* note 9; *Project*, *supra* note 34. For practical advice concerning the design and administration of a law school questionnaire, see the appendix to this essay.

49. Our own survey of Boalt Hall students produced a response rate of nearly 80 percent. Homer & Schwartz, *supra* note 9.

depending on your resources. The questionnaire process generally involves five basic steps: (1) identification of issues and formulation of initial hypotheses; (2) design of the survey instrument; (3) administration of the survey; (4) analysis of statistical data and interpretation of the findings; and (5) dissemination and application of the results. The authors have provided a practical guide to the design and administration of a law school questionnaire in the appendix to this essay.

B. Alternative Methodologies

Many students are intimidated by the thought of administering a formal survey. This is not an entirely unreasonable response. Luckily, several alternative techniques are available for the effective collection of empirical data. These methods use many of the same skills as survey research, but allow you to make findings based on more limited data.

1. Census Data

Information can be obtained from sources other than your respondents. The admissions office usually has extensive records concerning student demographics. The registrar's office or the office of the dean of students may be willing to make statistics about academic performance available to you. Additionally, student groups may have compiled useful information. Even if you use other methodologies, you may utilize such census data to interpret the accuracy of your findings. The advantage is that the statistical analysis has either already been completed or the data are conducive to immediate interpretation.

2. In-depth Interviews

The Yale study published in 1988 makes masterful use of semi-structured interviews focusing on specific topics.[50] Responses were framed in terms of specific experiences rather than general reactions. Few female readers will fail to identify with the situations described by the articulate, insightful respondents. Interviews provide a richness and emotional depth that is impossible to re-create in a report based on statistical analysis. A second varia-

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50. Weiss & Melling, *supra* note 22.

tion exists in the nondirective interview, in which the respondent speaks freely on certain pre-selected topics. This approach is based on the notion that if someone speaks long enough, he or she will say something of interest (Unfortunately, this assumption is contradicted by many professors' lectures in law school, not to mention the more predictable in-class comments by students).

Interview responses can be used to offer somewhat limited numerical support for a hypothesis (depending upon the number of interviewees). More significantly, however, they permit the researcher to limit the size of her respondent pool and to aim for depth rather than breadth. The interview format tends to capture the complexities and ambiguities of respondents' opinions better than questionnaires. Depending upon how the results are presented, interviews provide the reader with a more compelling picture of each individual respondent. Interviews also convey a stronger sense than a questionnaire of the social and political context in which the information is being offered.

The advantages are balanced by a number of disadvantages. The success of such interviews largely depends on the skill of the interviewer and the ability to tactfully redirect the respondent's comments when necessary. In order to compare responses, consistency must be maintained if there are multiple interviewers. The respondent pool must be selected to accurately reflect the population you are interested in researching. A control group may be necessary.

Data management of interview responses can be difficult. Some people do not want to be tape-recorded. Even when there are no objections, transcription can be burdensome. Moreover, such findings resist quantification or categorization. Finally, such research is subject to the standard criticism that inevitably accompanies personal narrative—the charge that the responses only reflect the beliefs of the respondents and cannot be extrapolated to represent the views of others.

3. *Focus Group Discussions*

Focus groups consist of five to ten respondents brought together to form a discussion group under the general direction of the researcher. The focus group method offers the researcher the opportunity to observe group interaction while at the same time obtaining information directly from individual respondents. Aaker

and Day suggest that in this arrangement group pressure and stimulation may clarify and challenge thinking, and that competition may produce a higher rate of response.[51] They express concerns, however, that individual responses may be contaminated by the opinions of other group members, that some people may be silenced by the group dynamic, and that scheduling can be a problem.[52] Nevertheless, Aaker and Day believe that the problems inherent in this approach may be controlled by a carefully planned agenda, skillful recruitment, and effective moderation by the interviewer.[53]

4. *Case Studies*

An effective way to control the amount of information collected is to produce a series of case studies. This enables the researcher to create a full picture of the respondent based on the latter's opinions, conduct, and experiences over a period of time. This portrayal of the individual is then interpreted as representing the experience of a larger group of peers, or is offered to inspire the reader to identify with the story being told. In many ways, this approach is most nearly consistent with the emphasis placed by outsider scholars on individual stories and reactions. Case studies tend to have a narrow focus, in contrast to other empirical methodologies which attempt to provide a more general overview.

5. *Direct Observation*

Observing and recording the behavior of subjects is a popular technique for data collection under certain circumstances. It can be done by a "head count" in which researchers gauge classroom participation of various groups by recording who is called on, who volunteers, and who asks questions. The multiple tallies ensure accuracy. The conduct of professors toward students can also be recorded in the context of varying inquiries: Members of which group are called on most frequently? Does the professor treat different groups differently? Who is ignored?

The limitations of this technique are obvious: It only allows researchers to identify student respondents by obvious demo-

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51. D. Aaker & G. Day, *supra* note 39, at 167-70.
52. *Id.*
53. *Id.*

graphic characteristics such as gender or (to a certain extent) ethnicity—and it may be tantamount to defamation to report findings concerning an offensive professor. Furthermore, it would be impossible to utilize outside of a closed environment such as the classroom.

On the other hand, the advantages are significant: inexpensive information gathering, immediate data, and, at least in the case of classroom participation, the availability of a solid body of scholarly literature that provides a theoretical foundation for an analysis of findings.[54]

6. *Random Poll*

Another technique that you may want to consider is a random poll of students. Researchers ask students a series of questions on the spot in the halls or in the student lounge. Since there is no need to fill out and return a questionnaire, a strong response is more likely. The disadvantage is that the questions must be limited, and the researcher may be at risk for bias in her selection of respondents, however unwitting. Inclusion of some demographic questions will help to ensure that your sample is truly random.

7. *Telephone Survey*

A variation on the random poll is the telephone survey. Phoning respondents may even allow the researcher to sit at a computer and directly key in responses to pre-designed questions displayed on the screen as the interviewee speaks. Each interview must be preserved carefully so that it can be distinguished from the others. There are sophisticated computer programs available for this purpose that integrate statistical analysis, but you can also design a simple form yourself.

III. Objectives: A Grassroots Model for Change

Once you have collected your body of data, you will want to put it to use. Obviously, your immediate objectives will be determined by the situation at your law school. Data that demonstrate a

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54. *See, e.g.*, Banks, *Gender Bias in the Classroom*, 38 J. Legal Educ. 137 (1988); Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. Legal Educ. 147 (1988); Hantzis, *Kingsfield & Kennedy, Reappraising the Male Models of Law School Teaching*, 38 J. Legal Educ. 155 (1988).

desire on the part of students for more practical legal education may be offered in support of a demand for more clinical programs. Data that indicate a feeling of lack of student preparedness for the first-year curriculum of legal studies may suggest the need for an improved orientation program prior to the commencement of first-year instruction. Data that show that women experience diminished self-esteem in law school may be interpreted as evidence of the need for a "special services" program for women that deals with newcomer issues and provides support for alternative viewpoints. The list is endless.

Simply providing the data is not likely to be sufficient. You will need to develop some kind of activist strategy that takes into account who your audience is and what you hope to accomplish. Toward this end, we propose a "dual agenda." The first goal is change at the individual or personal level. The second goal is institutional change.

Let's return to our illustration of the first-year student who objects to the use/abuse of the Socratic method. In the first scenario, you arrive at the professor's office and offer a personal protest. The professor is polite, perhaps even genuinely interested, but is not willing to make any class-wide change. In the second scenario, you adopt a different approach. You supplement your own reactions with some objective data, and you first address the students themselves. Only after you have generated awareness and support among your classmates do you confront the professor with your findings.

This approach is directed toward creating change at the individual level. It challenges the isolation that encourages so many law students to believe that the problems they experience in law school are due to their own shortcomings, that everyone else is doing just fine, and that tradition dictates what is best for all future lawyers. Comprehensive data and interpretation help newcomers to clarify their position and performance in the law school setting. Our own research indicates that students are likely to be isolated in their feelings of dissatisfaction or lack of confidence. The best kept secret of law school appears to be that you are not the only one having trouble with the process.

Suppose you convince a number of others to take action on their own behalf. In a sense, you are merely participating in the reallocation of control, cutting through the law-school disempower-

ment process and re-equipping students to function at their pre-law school level of self-confidence. You are exercising your consumer prerogative as students.

In our example, once students realize the extent of antipathy toward forced classroom participation, they will be more likely to come to the conclusion that their complicity in such a process is not required. Alternatives can be devised that empower students to take action on their own initiative. When called upon, decline to speak, indicating to the professor that you object to being put on the spot. Organize a group to meet with the professor to explain to him that you do not wish to be called on and that you will speak when you have something to say. Suggest that the professor permit students to opt out of the Socratic approach if they wish. Support others when they resist, and confront the professor if he insults someone. Bail out fellow students who are in trouble with their answers, rather than congratulating yourself that it's not happening to you. Respond, but insist on your own viewpoint. If you lack confidence, explore alternative views with friends beforehand. Best yet, give the professor the answer he wants to hear, and then explain the flaws of such a narrow-minded response.

These ideas are easier to suggest than to implement. Translating notions of student empowerment into a successful challenge to traditional legal education can be a formidable task. A professor who has stood behind a lectern in a large amphitheater and relied on the Socratic method for twenty years is not likely to spontaneously break the class into small discussion groups which may be far better suited to encouraging newcomers to participate. However, there is always hope. In electing to use the Socratic method, the professor holds himself captive to the responses he receives from students. If those responses are new or different, he will be forced to listen and, ultimately, to accommodate them.

Student empowerment is the critical first step in bringing about change in the law school setting and, ultimately, in the profession. Newcomers are presently in the ideal situation to make such changes. Our very presence and perspective disrupt traditional expectations. As we enter in increasing numbers, we should increasingly be able to withstand pressure to alter our outsider views to fit traditional norms.

Institutional change will follow—not automatically but more effectively. Most faculty and administrators have never been ex-

posed to outsider perspectives, and have no idea of how to accommodate them, even if they wanted to. They simply need to be educated as to how newcomers think, feel, and react. Toward that end, outsider scholarship is making a valuable contribution. Empirical data are also persuasive. Ultimately, however, professors need to see newcomers in action. Students who respect their own perspective will demand similar respect from faculty and the administration. When such an understanding has been established, meaningful institutional changes can take place.

CONCLUSION

With the arrival of newcomers and the diversity of perspective they bring, legal education is no longer an ethnocentric system existing for the sole purpose of perpetuating the old practices and traditions. The American legal system was, after all, intended to be forward-looking and to respond to social needs. In a broader context, Lawrence Friedman has written:

> Continuity and change. These are the constants of social life. And the legal system plays a crucial role in promoting both continuity and change. It helps bridge generations, but it also helps direct social change into smooth and constructive channels.[55]

Within this model, law schools, as the legal institutions designated for purposes of gatekeeping and training, have a significant responsibility. Having opened their doors to outsider students, they must now abandon the assimilationist notions of traditional legal education and respond to the diverse needs and goals of these future lawyers.

The entire burden, however, does not fall on the law school faculty or administration. Change must begin with the students, who must undertake the often difficult task of understanding, respecting, and communicating their outsider perspectives in the context of learning and practicing law.[56] Toward this end, we urge readers to recognize the value of the new outsider model in evalu-

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55. L. FRIEDMAN, AMERICAN LAW 12 (1984).

56. In a sense, this is somewhat at odds with the objectives of the faculty diversity movement, which is premised in part on the notion that role models behind the lectern are necessary to teach us that a diversity of perspectives is acceptable. Newcomers are surely aware of the distinctiveness of their views, even in the absence of like-minded faculty, and should insist on their own beliefs without waiting for faculty validation.

ating the assumptions inherent in traditional legal education and investigating the options available to those who find them antithetical to their own experience. In the process of transforming stumbling blocks to stepping stones, new routes can be cleared, new paths can be forged, and new directions can be explored.

APPENDIX

Practical Advice for Administering a Law School Questionnaire

Designing and administering a questionnaire can be an enjoyable and thought-provoking experience, if you have some sense of direction in the process. The purpose of this appendix is to supplement the information provided by general guides to survey research with suggestions specifically related to conducting a law school study. As we have suggested, it is not necessary to reinvent the wheel. The survey instruments used in the Stanford and Boalt studies are appended to the articles reporting their results.[57] Sudman and Bradburn also provide four sample questionnaires in their book, *Asking Questions: A Practical Guide to Questionnaire Design*.[58]

Remember, however, that sometimes a sample question may be flawed or slightly off-target for your purposes. For example, in designing the Boalt questionnaire, we were concerned about violating the privacy of respondents by asking them to directly disclose their grades. Instead, we constructed several broad reporting categories. Because these response categories were too general, our questions about grades did not produce meaningful data. We were unable to use these responses and had to rely solely on census data about grades that we were able to obtain from a separate source. Although this prevented us from having to worry about the "fudge factor" that is likely to be found in self-reported grades, we lost the opportunity to compare student responses with census data figures.

The following advice is offered to facilitate your research efforts. It consists, quite simply, of numerous details that researchers

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57. *See Project*, *supra* note 34; Homer & Schwartz, *supra* note 9.

58. S. Sudman & N. Bradburn, Asking Questions: A Practical Guide to Questionnaire Design (1989).

often have to learn the hard way. We hope it will be a series of stepping stones for our readers.

A. *Identification of Issues/Personal Experience*

Trust your newcomer perspective and intuition. Keep notes about what you actually experience and observe. Discuss your reactions with others to see if you can formulate preliminary hypotheses about what is taking place in class and at law school in general. Ask questions. When we were considering surveying Boalt students, we corresponded informally with a woman at an eastern law school who was conducting a series of structured interviews among her fellow students. In a letter to us, she included a comment from one of her (female) respondents: "I used to think of myself as an intelligent and articulate person. I don't feel that way about myself anymore." This comment eventually shaped one of our central hypotheses.

B. *Background Research*

In addition to drawing on your own experience, you will want to consult existing work along similar lines. One of the biggest mistakes that can be made in conducting any kind of research is to design your project without taking into account past studies, even if you ultimately take issue with them. Familiarity with existing work and context assists you in formulating the objectives of your research, suggests useful analytical models and research design, prevents the discouraging feeling that you are working in a vacuum, allows you to respond better to your critics, and provides a foundation for your study to prove or disprove earlier findings or assumptions, many of which deserve to be challenged because they intentionally or inadvertently stereotype women and people of color in a highly questionable manner.

The other mistake in conducting empirical research is overpreparation. Don't get bogged down in the scholarship. At some point you have to close the books and begin your own work.

C. *Basic Issues*

Identification of central issues for newcomers (or, alternatively, the specific groups you wish to study) is fundamental to your research. The issues that you address will inform your hy-

potheses, determine the questions that you ask, and influence your analysis. In the course of our own preliminary research, we most frequently encountered the following issues:

> *Academic Performance*—We suspected that women and possibly people of color were not performing as well as white males. Earlier studies did not support our general observations and we wanted to test our hypothesis. Ideally, self-disclosure of grades should be balanced with census data from the school on grades and qualifications at admission.
>
> *Classroom Dynamics*—The silence of women has been considered and even documented a number of times from the perspective of the professor. Less attention has been paid to other outsiders. Students need to be polled regarding the reasons for their nonparticipation (Fear? Self protection? Alienation? Disrespect for the classroom dynamic?).
>
> *Curriculum and Course Texts*—Good scholarly work is being done on this topic. Empirical data from students regarding their responses to material (particularly core curriculum) would be very useful to supplement the essay format of the scholarship in print.
>
> *Self-Esteem*—A major problem for many outsider students seems to be the jolt to their self-confidence that law school provides. Many students at elite law schools experience academic difficulties for the first time in their lives. This is exacerbated by the fact that outsider students may resent the mainstreaming process of law school. It would be useful to probe this area further.
>
> *Adherence to Values*—Many students have expressed concern about their ability to maintain their values in a system they perceive as inherently hostile to their beliefs. Data concerning the feelings and reactions of the new outsider students particularly need to be amassed.
>
> *Balancing Personal Life and Practice of Law*—This may be a concern primarily for women during law school. It would be interesting to see whether it is an issue for other groups. Ideally, questions would be structured to permit follow-up five years after graduation.

Reasons for Attending Law School—Such questions are usually asked because this area of inquiry is well established by past research. In addition, however, such responses are useful in light of disclosure of plans at graduation. This area lends itself to testing over a three or four year continuum.

Faculty Diversity—This is currently an issue of great importance at many schools and throughout the profession. Data that support student demands for diversity in hiring are invaluable. This can include the reaction of students to the existing faculty composition and data on the changes students would like to see.

D. *Hypotheses*

Once you have identified the issues and determined the respondents you are interested in surveying, you will be ready to develop a set of hypotheses, tentative assumptions which will be tested by your results. For example, we hypothesized in our Boalt study that women would participate in class less often than men. This was borne out by our findings. However, we also thought that men and women would demonstrate comparable academic performance. We were quite surprised when our data failed to support this hypothesis.

The purpose of the hypothesis is not necessarily accurate prediction, but rather to provide a focus for organizing your findings. A survey without surprises is no fun and, furthermore, is subject to criticism for being designed to elicit biased responses.

E. *Identification of Respondent Groups*

A word of advice. In an era of increasing diversity among law students, it is not sufficient to structure an investigation by gender categories only, although this is the traditional approach. Ethnicity is a determinative factor in the law school experience, and must be considered wherever differences exist. Other possible respondent categories in addition to gender and ethnicity include age, socioeconomic background, educational background, political beliefs, career goals, sexual orientation, marital status, nature of enrollment (full time/night school), and year in school (it would be interesting and informative to survey a single class once a year over the

three or four years of their legal education, as many responses may be related to the stage of the respondent's legal education). Don't forget to designate a control group for purposes of comparison, or you will be unable to persuasively argue that your findings are specific to your particular focus group.

F. Survey Design

We were lucky to have the opportunity to consult extensively with staff at the Survey Research Center, University of California, Berkeley, in designing our questionnaire. We found the following advice to be particularly helpful in our own work:

> —Begin with questions that immediately trigger the interest of respondents. Conclude with the demographic questions, as they tend to be the least engaging.
>
> —Avoid complex questions, which may incorporate inaccurate assumptions.
>
> —Instead of using true/false questions, which tend to inaccurately polarize responses, offer a statement and ask for responses along an agree/disagree continuum.
>
> —Repeat some questions that have been asked in prior studies in order to compare your own findings.

G. Administration of the Survey

Administration of the survey can be as simple or complicated as you wish. A few practical matters should be considered with respect to a law school study:

> *Pre-testing*—Enables you to discover any problems prior to full-scale use of your questionnaire.
>
> *Scope of Inquiry*—The more information solicited, the longer the questionnaire, and the greater the costs of photocopying and/or mailing, and entering, managing and analyzing the data.
>
> *Sample Size*—Considerations are similar to those in the item above, except that care must be taken to sample enough respondents to ensure accurate and reliable findings.
>
> *Distribution*—The expense of mailing can be prohibi-

tive. Double postage is involved if return is requested by mail. Distribute through school mailboxes or other direct contact if possible.

Sponsorship—Even if you are working independently, a cover letter from a respected faculty member or organization encouraging students to respond can greatly increase your return rate.

Confidentiality/Anonymity—Law students are particularly sensitive to these issues and require reassurance.

Second Distribution—A second pass greatly boosts the response rate, possibly by 20% or more.

Oversampling—This technique may be necessary to compensate for demographic imbalances. For example, you may need to poll all students of color, but only one in every five white students.

Complexity—The general advice concerning questionnaires is to keep them short and simple. Law students, however, appear to be eager to respond despite the length or even the difficulty of the questionnaire, so long as the questions are well designed.

H. *Statistical Analysis*

Of all aspects of empirical research, this stage is most likely to require assistance unless, of course, you are familiar with this field.[59] Luckily, nowadays almost every law school has students, faculty, or staff who are familiar with computerized data analysis and who can assist you. If you are planning to publish your findings, you may be able to barter a co-authorship for data analysis services. Students in other departments such as statistics or social sciences may be willing to provide their skills in return for permission to use your data for their own academic purposes. (A good set of data is hard to find.) Your dean of students may be sufficiently interested in your results to find some funding for your project, including money for data entry and analysis. The possibilities of such arrangements are limited only by your creativity and perseverance.

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59. For a conventional model for statistical analysis, see *Project*, *supra* note 34, at 1237.

I. Theoretical Analysis

The interpretation phase is the most important part of your project, yet traditional studies often give it the most cursory treatment. The purpose of collecting statistical data need not be (and should not be) merely descriptive. The numbers enable the researcher to identify contrasts, similarities, and trends among respondents. These observations, in turn, should encourage the researcher to consider broader explanations that may account for such findings, such as a relevant social or political model or philosophy.

J. Dissemination of Information

You may have a number of specific objectives in disseminating your findings. In our own case, we wanted to distribute the preliminary results to the respondents and faculty as soon as possible (without sacrificing accuracy in analysis). Student support for the survey had been very strong, and we wanted to respond in kind.

We distributed a one-sheet synopsis of our findings to all students and faculty via the law school mailboxes. We also organized a school-wide forum where we offered a more detailed presentation and interpretation of the findings.

At the forum, interest among students ran particularly high. Few professors attended, which was not surprising at Boalt. At that time faculty were not particularly interested in "student" issues, although this insensitivity was to be relatively shortlived, in part due to student activism surrounding diversity issues. When we opened the floor for comments, the discussion was quite animated. The experience identified student concerns in a way that provided strong direction for our final analysis.

Preparing your study for publication has multiple benefits: It motivates you to think carefully about your findings and their implications, it requires more thorough background research, it offers the possibility of wider dissemination of your data and analysis, it may encourage others to undertake their own analysis, and it contributes to a dynamic picture of the changes that are taking place in legal education. The disadvantage, of course, is that the publishing process can be slow and empirical data are most valuable while they are current.