cate the UGPA-matching procedure developed in Gannon's 1981 pioneering study.

The results indicate that among law school applicants with essentially the same performance in college, students of colour encounter a substantial performance difference on the LSAT compared to their White classmates. These gaps are most severe for African American and Chicano/Latino applicants. A second round of matching, controlling for choice of major within each college or university, does nothing to reduce these performance differences on the LSAT. The results of this study therefore counter the claims of several standardised testing enthusiasts and affirmative action critics that the LSAT provides a neutral method of assessing academic achievement.

The LSAT systematically disadvantages minority law school applicants. Therefore affirmative action can be justified as a corrective for those racial and ethnic biases that use of the LSAT introduces into the admissions process. It is essential to revamp admission criteria to reduce the influence of the LSAT, particularly at law schools that are prohibited from using race in admissions decisions.

One strategy universities have recently adopted to promote racial and ethnic diversity in lieu of affirmative action is to de-emphasise standardised tests as criteria for entry. Others have recognised the racial gate-keeping effect of the LSAT. An American Bar Association Committee on Diversity in Legal Education recommended using other selection criteria once a qualifying threshold has been met.

In summary, the available data from undergraduate institutions and law schools suggest that standardised tests typically produce larger differences between Whites and students of colour than other academic criteria. This fact negatively affects minorities' admission opportunities, particularly when test scores are heavily relied upon or when race-conscious affirmative action is prohibited.

This study is an effort to provide empirical answers to the ongoing scholarly debate over whether the LSAT stratifies opportunity by race and ethnicity among students who have demonstrated similar accomplishment levels in college. While the results of this study indicate that the LSAT favours Whites among equally achieving college students, many leading scholars of affirmative action do not vigorously investigate whether standardised tests like the LSAT are biased against students of colour. Underlying this lack of interest in the test bias issue is a consensus among otherwise sharply divided scholars that racial/ethnic differences in LSAT scores reflect real underlying differences in academic or cognitive skills. The LSAT is culturally biased because it artificially exaggerates educational differences between Whites and students of colour.

Gannon's 1981 study concluded there was ample support for the hypothesis that the LSAT or the testing milieu was biased against students of colour. In other words, minority law school applicants faced a LSAT bias in addition to disadvantages in prior educational opportunities. Until now, Gannon's study, which is twenty years old, has never been confirmed or challenged by replication.

The scholarly discourse on test bias acknowledges that historically marginalised groups may face added pressure and anxiety that disproportionately depresses their performance. Studies on the psychological atmosphere of standardised test taking indicate that merely making the content of the test the same for everyone does not guarantee that taking the test will be the same regardless of race or ethnicity. Stereotype threat can affect any group where there exists a widely recognised negative stereotype about that group's performance in a certain domain.

When success in the practice of law becomes the benchmark, rather than law school grades, students of colour at highly selective institutions, many of whom were recipients of affirmative action, appear to do as well as, and in some cases better than, Whites. In fact, there is more empirical support for the proposition that institutional racism influences performance in college and disproportionately harms students of colour.

Many people, especially affirmative action critics and testing advocates, assume that standardised tests like the LSAT are a neutral reflection of racial and ethnic differences in educational achievement. This study of elite law school applicants, matched on UGPA within the same institutions and majors, establishes that such an assumption lacks empirical support.

Organisations active in the effort to dismantle affirmative action have developed their litigation strategies around the assumption that the LSAT equals merit. Given the centrality of the testing issue to the affirmative action debate, it is essential that the fairness of the LSAT and other standardised tests be vigorously contested when 'reverse discrimination' challenges to law school admission policies are still in the pre-trial stage. Concerns over ethnic bias in standardised tests need to be linked to a more far-reaching and transformative critique of the conventional higher education testocracy.

GENDER ISSUES

Surveying gender bias at one midwestern law school

L Wilson & D Taylor

9 *Am U J Gender Soc Pol & L*, pp 251-273

From 1997 to 2000 there was a decline from 51% to 33% in the women represented in the class entering Northern Illinois University College of Law ('NIUCOL'). This was especially alarming because one of the administration's missions has been to provide access to the legal profession for persons belonging to groups traditionally under-represented in the profession. The decline was viewed as a possible step backward in what had previously been viewed as a very successful effort to recruit higher levels of women students.

Some members of the faculty began looking for new ways to encourage more women to apply to, and attend, NIUCOL.

For instance, some female students were asked during informal discussions for their input on how to make NIUCOL a more inviting place for other female students. Anecdotal evidence regarding the 'chilly' atmosphere which female students face at NIUCOL led to the design of a questionnaire which could be distributed to every registered law student. This questionnaire was created to measure whether statistical data would support or refute the anecdotal stories of hostility and harassment uncovered in the informal interviews.

While the literature is replete with anecdotal stories about women being sexually harassed, demeaned and intimidated by their classmates and professors in law school, there has been relatively little statistical analysis done on the subject. The statistical analyses that have been done tend to support women's stories about harassing behaviour in the classroom.

The message derived from prior research is clear: law schools shape the next generation of lawyers and judges. For this reason, it is incumbent upon law school administrations to take an active stance in combating sexual bias in the classroom as one step towards eradicating sexual bias in the courtroom.

Creating a survey that would accurately measure the types and levels of gender hostility in the law school classroom was a long process of drafts and redrafts. As indicated above, prior to creating the survey, a number of female students were informally interviewed about their experiences as women at NIUCOL.

Consistent with research from other law schools, a large number of NIUCOL students agreed that students are making gender-offensive remarks in the classroom. Many students also agreed that professors tolerate and do not address such offensive comments by students. Consistent with prior studies, female students at NIUCOL report that female professors are not given the same respect as male professors.

Researchers have consistently reported that higher numbers of female students than male students are left feeling isolated and inarticulate by their law school experience. They similarly report lower levels of participation. Women students at NIUCOL indicated feelings of competency nearly equal to their male counterparts. However, women did indicate less satisfaction with their lives since entering law school. As noted in the literature review section, female students surveyed at other law schools suggested that they lose their voices in the classroom and that male students dominate discussions. Women students at NIUCOL likewise indicated less participation in the classroom than their male counterparts.

Similar to the survey results derived from law schools around the country, women at NIUCOL reported experiencing higher levels of sexual harassment and hostility than men believed women experienced. A large number of women and some men indicated that both students and professors in the classroom make offensive and demeaning comments. Students also indicated that professors allow such comments to go unchallenged.

Of the small number of women who chose to file a complaint, none were satisfied with the results. Many women also indicated being sexually harassed by students and professors.

Consistent with research done at other law schools, women also reported feeling somewhat less satisfied with their law school experience than men. Finally, women reported lower levels of participation than men reported.

Researchers from other law schools have indicated that women's silence in the classroom is a result of feeling isolated and alienated. It has been suggested that some of this alienation stems from women's perceptions, similar to those of racial minorities, that the law school classroom is hostile towards them. It has also been suggested that these difficulties in the classroom, in all likelihood, affect learning, teaching, and scholarly work.

Researchers have concluded that hostile and harassing behaviour towards women law students so impedes their educational and professional progress that law school administrations must act to eradicate this kind of discrimination. It is imperative that law students and faculty are made aware of the ways in which gender hostility in the classroom adversely affects women law student's academic careers and, quite possibly, their professional careers.

The findings of the questionnaire highlight the need to address two important aspects of combating sexual harassment and hostility in the classroom. First, programs should be implemented to prevent the harassing behaviours. Second, mechanisms need to be in place for addressing harassing behaviour, should it occur.

As law schools typically set aside time for new student orientation, a training program should be implemented during this time with mandatory attendance by students and recommended attendance by professors. This program should focus not simply on what kinds of harassing comments and behaviours are illegal, but more importantly, on what kinds of comments and behaviours are considered offensive and disparaging to women. Additionally, law school faculty should be required to attend a separate program designed to educate the staff about not only what kinds of comments and behaviours are considered disparaging to women but also how to respond constructively and constitutionally to students' offensive comments and behaviours.

It is apparent from the questionnaire that students who report hostile or harassing behaviours are not satisfied with the results of that report. One reason for the dissatisfaction is that students are often not made aware of how their complaints are subsequently handled. There should be several resources for students to utilise to address complaints. First, a complaint form should be created to allow students to record their concerns. Second, it is recommended that several faculty members – and possibly students – be available to speak with students about hostile or harassing behaviour encountered by students. Finally, a follow-up procedure (where the identity of the complaining student is known) should be

created so that students may be made aware of what and why a particular action was taken or not taken.

American law schools have come a long way since the time when women were not even allowed to attend. However, the latest research suggests that high levels of gender hostility continue to pervade this nation's law school classrooms. Consequently, women law students are subjected to unequal educational opportunities.

Teaching torts – gender matters – teaching a reasonable woman standard in personal injury law
M Schlanger
45 St Louis L J, pp 769-778

'Reasonable care' is, of course, a concept central to any torts class. But what is it? One very standard doctrinal move is to conceptualise reasonable care as that care shown by a 'reasonable person' under like circumstances. The next step, logically, is to visualise this reasonable person. Visualisation requires some important choices. For example, is the reasonable person old or young? Disabled or not? But, oddly, no casebook deals with the trait that nearly invariably figures in our description of people: sex.

If the casebooks are silent, however, the cases and commentary are not. Judicial opinions frequently used to refer to the 'reasonable man' rather than the reasonable person. Feminism has not let the masculine origin of the reasonable person go unremarked. Feminist scholars have argued that tort law used to evaluate care against a standard that was not just linguistically but substantively masculine – that the reasonable man is the mascot of tort law's oppression and exclusion of women. The interaction of gender norms and the law are key to any adequate presentation of sexual harassment, negligent infliction of emotional distress and damages, but gender is relevant to other topics as well.

The first and most sustained discussion of gender difference and what the law might do about it occurs quite early in the class, when the author asks her students to consider what tort law might look like if it treated a defendant's or plaintiff's gender as relevant to jury assessment of due care. What, that is, would it mean for the law to talk about reasonable women as well as men?

For many scholars and activists, a central question for legal feminist theory is whether women's equality and welfare is best fostered by insisting on adherence to universal legal standards or on recognition and even privileging of women's difference from men.

The author tries to vary her pedagogical approach in Torts, to accommodate students' different learning styles. Several of the cases studied by her students, which come from the 19th century and involve women driving carriages, introduce concretely the idea of gendered standards of care, highlighting that reference to a person's sex in defining the care required of her necessarily rests on some presumption of sex difference. Students are asked to accept for the sake of argument that, on average but not for all people, this difference was, in the mid-19th century, real. The author also asks them to assume that equality of men and women is an important (if not necessarily trumping) value. This last assumption is important for teaching purposes, because an attempt is made to focus the conversation on the complex conceptual and implementation problems raised by a norm of equality – not on the issue of whether sex equality is politically appropriate on its own merits.

The idea is for the class discussion to develop the implications of each option. The author elicits from some students the point that holding women to a masculine standard seems unfairly punitive. Others counter that perhaps the higher standard pushes women to eliminate their driving deficit. If, however, the difference is not something easily eliminated, the result of a masculine standard is a disincentive for women to drive. With some guidance, the topic then opens up into debate about the potential for either tort judgments or judicial reasoning to influence behaviour. The students are encouraged to move from speculation about the possible incentive effects of tort judgments to normative discussion of whether law should simply reflect, or rather mould, a community's ideological commitments.

Those students who think it appropriate for common law rules to shape society typically argue that holding men and women alike to a universalised standard has the advantage of not reifying gender inequality and perhaps even of making perceived feminine driving inadequacies less salient to observers of court cases. But they are forced by others to concede that the 'universal' standard has a disparate impact on women, and is at least problematic for this reason. The author further challenges those who are moved by economic arguments, asking whether it is socially optimal for the law to require women to live up to a masculine standard, given that achieving a certain level of safety is typically more 'costly' (if not monetarily then in terms of effort) for women than for men.

The class on 'reasonable women' gives students a chance to explore the interaction of law and social norms in a doctrinal context that grips them more directly than many. It reveals that doctrinal implementation of an ideal of equality between the sexes is more complicated than most of them would have thought. The author hopes that it helps to counter the alienation some law students report is caused by law school classes' facade of 'perspectivelessness,' by authorising students to attend to both male and female perspectives, for the day and thereafter. And it reinforces the value of close attention to judicial language.

LEGAL ETHICS

Challenges to the academy: reflections on the teaching of legal ethics in Australia
M Castles
12 *Legal Educ Rev* 1-2, 2001, pp 81-104

Approaches to teaching legal ethics have varied considerably over the years in Australia. Inquiries undertaken by the Law Council of Australia in 1988 indicated that