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The Undertraining of Lawyers and Its Effect on the Advancement of Women and Minorities in the Legal Profession

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**THE UNDERTRAINING OF LAWYERS AND ITS EFFECT ON
THE ADVANCEMENT OF WOMEN AND MINORITIES IN
THE LEGAL PROFESSION**

IRENE SEGAL AYERS[†]

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[†] Acting Assistant Professor, New York University School of Law. This article has its roots in a seminar paper on covert forms of race discrimination in law firms that I wrote when I was a law student a decade ago in Professor Wendy Parker's seminar "Remedying Racial Discrimination," and in the work I performed as a research assistant for Professor Dorothy Brown's investigation of causes of racial bias in law school admissions. However, it was through the Lawyering Faculty Workshops and through teaching in the Lawyering Program at NYU School of Law that I began to understand the connection between what was happening to women and minority attorneys in law firms, and the nature of the education they received in law school. I owe an enormous intellectual debt to Professor Peggy Cooper Davis, Director of the Lawyering Program at NYU School of Law, whose summer Lawyering Faculty Workshops and Colloquium in Lawyering Theory in Fall 2005 and Fall 2006 introduced me to the Carnegie Foundation's study of legal education, and to the studies of female law students' transition to law school by Psychology Professor Bonita London. Most importantly, I want to thank Professor Davis and the NYU Lawyering Program for the education they provided me in the history, theory, and practice of Lawyering pedagogy. I am also grateful to the Lawyering Faculty Reading Group, especially Professor K. Babe Howell, Professor Jacqueline Jones-Peace, Professor Mary Holland, and Professor Rebecca Rosenfeld, for accompanying me as we read and discussed together some of the narratives of becoming lawyers that are the subject of this article. Finally, I thank my research assistants Jack Jason Davis (NYU J.D., 2008) and Leisa Nathan (NYU J.D., 2009) for their extraordinary diligence and enthusiasm for this project.

INTRODUCTION

Of all the civil rights for which the world has struggled and fought for 5000 years, the right to learn is undoubtedly the most fundamental.¹
—W.E.B. DuBois

Professional education in the United States ideally serves a democratic civic mission, promoting social mobility and economic advancement. In place of traditional apprenticeships available only to those with the familial or social ties to secure them, institutions of professional education—medical schools, business schools, engineering schools, law schools and others—offer formal opportunities for the training essential for entrance into well-paying, socially-powerful professions requiring specialized knowledge and skills. However these institutions fall short, particularly in admissions policies that disadvantage women, minorities, and the poor, the promise still beckons. With this M.D., M.B.A., M.Eng., or J.D., you too can have the economic and social power, the personal dignity and professional pride, and the opportunities to lead and serve that come with entrance into these professions. It no longer matters if no one in your family, or among your family’s friends, was a doctor or lawyer with whom you could apprentice. Professional education in its ideal form—with fairer, more open admissions and more generous scholarship aid—will provide you with training and entry to your chosen profession far superior to and far more egalitarian than the haphazard, informal and closed tradition of personal apprenticeships.²

Such is the ideal.³ In legal education in the United States, however, much of that historical model of personal apprenticeship still remains. Law schools

1. W.E.B. DU BOIS, *The Freedom to Learn*, in W.E.B. DU BOIS SPEAKS 230–31 (P.S. Foner ed., 1970).

2. See, e.g., WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER*, 91–117 (1998) (discussing the special importance of professional education in promoting democratic goals of economic and social advancement). See generally AMY GUTMANN, *DEMOCRATIC EDUCATION*, 172–93 (1987) (presenting a more theoretical analysis of how higher education serves democratic goals).

3. The amicus briefs filed in *Grutter v. Bollinger*, 539 U.S. 306 (2003), are replete with invocations of the democratic missions of law schools. See, e.g., Brief for American Law Deans Ass’n as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 399070, at *12 (“[P]ublic universities have historically provided a principal path by which talented citizens of modest means join the elites of American society.”); Brief for Harvard University et. al. as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Nos. 02-241, 02-516), 2003 WL 399220, at *2 (“[H]ighly selective universities have long defined as one of their central missions the training of the nation’s business, government, academic, and professional leaders.”); Brief for American Sociological Ass’n et al. as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 398313, at *30 (“Higher education is our gateway to economic security, individual responsibility, professional achievement, and community leadership.”); Brief for Ass’n of American Law Schools as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 399076, at *2 (“[Law schools] prepare students to practice a profession that lies at the core [sic] of American self-governance.”). The democratic mission of law schools has been at times an explicit part of the American Bar Association commitments. See CTR. FOR PROF’L RESPONSIBILITY, AM. BAR ASS’N, *ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT*, at xv (4th ed. 1999).

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offer an education that focuses on one feature of the work that lawyers perform—legal analysis—and depends on post-graduate work experiences—on-the-job apprenticeships—to complete the education of new lawyers.⁴ This is the conclusion of the Carnegie Foundation for the Advancement of Teaching, which has been conducting a series of investigations of the professional training offered by academic institutions.⁵ Its Preparation for the Professions Program has studied, or is currently studying, clergy education, engineering education, nursing education, medical education, and legal education.⁶ What the foundation has learned about legal education, recently reported in *Educating Lawyers: Preparation for the Profession of Law*, is that it is unique among modern professional schools in its disregard for comprehensive professional training that integrates the transmission of substantive knowledge, modes of thinking, practical skills, and professional role identity and ethics.⁷ According to *Educating Lawyers*, “[u]nlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice.”⁸

The recent Carnegie Report on legal education is certainly not the first and probably not the last study to observe that law schools undertrain aspiring attorneys and to suggest much needed reforms. Similar critiques of legal education have been made since early in the twentieth century.⁹ In the past fifteen years, these critiques and reform initiatives have included the American Bar Association’s (A.B.A.) 1992 MacCrate Report entitled *Narrowing the Gap*,¹⁰ its 1996 report *Teaching and Learning Professionalism*,¹¹ and the Clinical Legal Education Association’s 2006 report *Best Practices for Legal Education*,¹² as well as prolific scholarly literature in law reviews.¹³

4. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, at 6 (2007) (“In the law, however, the consequence of the university model [of professional training] was more often simply the deferment of practice experience until entry into the profession.”).

5. Information about the Carnegie Foundation’s studies of professional training can be found at Preparation for the Professions Program, <http://www.carnegiefoundation.org/programs/index.asp?key=30> (last visited Feb. 7, 2009).

6. *See id.*

7. SULLIVAN ET AL., *supra* note 4, at 78-84 (comparing legal education to engineering and medical education).

8. *Id.* at 240.

9. *See, e.g.*, A.Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* (1921); Jerome Frank, *Why Not A Clinical Lawyer-School*, 81 U. PA. L. REV. 907 (1933); DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* (NYU Press, 2004) (1983).

10. *See* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (also known as THE MACCRATE REPORT) (1992).

11. *See* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE* (1996) [hereinafter *TEACHING AND LEARNING PROFESSIONALISM*].

12. *See* ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007), available at http://law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf.

13. *See, e.g.*, Gary Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995); Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5 (1995); Peggy Cooper Davis, *Slay the Three-Headed Demon!*, 43 HARV. C.R.-C.L. L. REV. 619 (2008); Harry T.

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In a seemingly parallel universe of studies and reform proposals, the attention of other lawyers and legal scholars has been focused elsewhere: on the obstacles to professional advancement faced by women attorneys and attorneys of color. These reports are a response to ongoing and glaring inequities in the careers of women attorneys and attorneys of color after graduation from law school compared with the careers of their white male counterparts: lower salaries, fewer promotions, fewer advancements to partnership in law firms and stunningly higher attrition rates—both from law firm jobs specifically and from the legal profession generally. As a recent A.B.A. report observed:

Almost half of the associates in private law firms are now women and 15% are attorneys of color, but in 2004 only 17% of law partners were women and only 4% were attorneys of color. In the late 1990s, the National Association of Law Placement (NALP) found that more than 75% of minority female associates had left their jobs in private law firms within five years of being hired, and after eight years the percentage of those leaving rose to 86%. By 2005, 81% of minority female associates had left their law firms within five years of being hired.¹⁴

Prominent recent studies and calls for reform include the 1994 report by the Multicultural Women Attorneys Network, *The Burdens of Both, The Privileges of Neither*,¹⁵ the 2005 A.B.A. report, *Miles to Go: Progress of Minorities in the Legal Profession*,¹⁶ and most recently the 2006 A.B.A. report, *Visible Invisibility: Women of Color in Law Firms*.¹⁷

What these studies of women and minority attorneys all have in common is an exclusive or predominant focus on problems with how law firms treat women and minority attorneys, such as lack of mentoring, exclusion from social

Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993); Carrie Menkel-Meadow, *Taking Law and _____ Really Seriously: Before, During and after 'The Law,'* 60 VAND. L. REV. 555, 561 (2007); Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Legal Realist Pedagogy*, 60 VAND. L. REV. 483 (2007); Todd D. Rakoff and Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597 (2007); Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139 (1995); Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609 (2007); David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

14. ABA COMM. ON WOMEN IN THE PROFESSION, *VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* (2006) [hereinafter *VISIBLE INVISIBILITY*].

15. ABA COMM. ON WOMEN IN THE PROFESSION & ABA COMM. ON OPPORTUNITIES FOR MINORITIES IN THE PROFESSION, *A REPORT OF THE MULTICULTURAL WOMEN ATTORNEYS NETWORK: THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER* (1994) [hereinafter *THE PRIVILEGES OF NEITHER*]. This report includes a brief chapter on problems of invisibility and presumptions of incompetence experienced by women of color in law schools. *Id.* at 11-13.

16. ABA COMM. ON RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION & ELIZABETH CHAMBLISS, *MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION* (2004) [hereinafter *MILES TO GO*].

17. See *VISIBLE INVISIBILITY*, *supra* note 14 (finding that the high attrition rate of women attorneys of color in law firms is due to lack of mentoring, low-level routine work assignments, exclusion from networking and client-development, the burden of having to disprove negative preconceptions about competence, and unfair performance evaluations that magnify mistakes and ignore accomplishments).

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networks, limited access to clients, inferior work assignments, subjective performance evaluations, and preconceptions of incompetence.¹⁸ Little if any attention is paid to how the earlier training that these attorneys received in law school might have contributed to the later career obstacles they face.¹⁹ Conversely, the studies of the ways that law schools undertrain law students—most notably the recent Carnegie Foundation report—pay little or no attention to

18. See TEACHING AND LEARNING PROFESSIONALISM, *supra* note 11; STUCKEY ET. AL., *supra* note 12; Blasi, *supra* note 13; VISIBLE INVISIBILITY, *supra* note 14. In a controversial 2006 law review article, Richard Sander claims that the negative experiences of minority lawyers in law firms can be explained by affirmative action. Sander argues that elite law firms lower their standards to hire minorities with lower law school grade point averages (which, in turn, he claims elsewhere are an effect of affirmative action in law school admissions). Thus, the lack of minority attorneys at the partnership level is the result of their alleged inferior lawyering ability as evidenced by lower grades. See Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755 (2006). Implicitly, my article is a refutation of Sander, insofar as I show how women attorneys of color are disproportionately disadvantaged in their careers by a law school curriculum and culture that promotes undertraining of law students. For a more direct refutation of Sander's claim, see James E. Coleman, Jr. and Mitu Gulati, *A Response to Professor Sander: Is it Really All About the Grades?*, 84 N.C. L. REV. 1823 (2006) (attributing high attrition rate of black associates to the way that law firms distribute opportunities for mentorship, training, and meaningful work assignments); Veta T. Richardson, *The 'Unqualified' Myth*, LEGAL TIMES ONLINE, Aug. 21, 2006 (arguing that success at law firms has little if any correlation with grades or elite law school attendance, and that, if anything, attorneys of color are held to higher standards within firms than are white males). Others have claimed that minorities leave large law firms because of personal preferences, that is, they are just not interested in becoming law firm partners. An effective refutation-by-analogy is provided by E.J. Graff in *The Opt-Out Myth*, COLUM. JOURNALISM REV., Mar./Apr. 2007. Graff argues that structural, institutional barriers in the form of workplaces with 24/7 demands and school systems that dismiss students by 3 p.m. push working mothers back into the home. Such women can hardly be said to "choose" to stay home; the ones who assert it is their choice may simply be following "the most emotionally healthy course: wanting what you've got." The same could be said for arguments that minority attorneys "choose" not to stay at their law firms.

19. Lani Guinier's groundbreaking feminist critique of legal education was the first to argue that the overuse of the Socratic Method and the overemphasis on aggressive competition in law school alienated female law students and caused them to underperform. LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997). While Guinier notes that law school could teach a broader range of skills in a more collaborative way, a detailed investigation of how law school undertrains students and the specific ways that law school's undertraining might later harm the careers of women lawyers are beyond the scope of this early work. Nevertheless, Guinier's book inspired this article's further study of the connection between undertraining and post-J.D. obstacles for women attorneys of color. Other research on the experiences of women and people of color in law schools similarly owes a debt to Guinier's pioneering work. See, e.g., CARRIE YANG COSTELLO, *PROFESSIONAL IDENTITY CRISIS: RACE, CLASS, GENDER AND SUCCESS AT PROFESSIONAL SCHOOLS* (2006) (arguing that women and people of color underperform in professional schools due to "identity dissonance," the clash between their personal identity and gendered and raced norms of professional identity); Sari Bashi & Maryana Iskander, *Why Legal Education is Failing Women*, 18 YALE J.L. & FEMINISM 389 (2006) (reporting the results of a study of Yale Law students showing that female students participate less in class and form fewer mentoring relationships with faculty, and that these behaviors are the effects of law professors' unequal treatment of female students and the professors' rewarding of behaviors displayed more often by males); Sarah Berger et al., *"Hey! There's Ladies Here!!" Reflections on Becoming Gentlemen: Women, Law School, and Institutional Change*, 73 N.Y.U. L. REV. 1022 (1998). In their studies of the institutional structure of corporate law firms and how it affects the careers of black lawyers, David B. Wilkins and Mitu Gulati very briefly suggest ways that law schools could better prepare law students. In other scholarship, Wilkins advocates courses in the profession of law. See *infra* text accompanying notes 70–79.

how the deficiencies in the current model of law school education may disproportionately disadvantage women and minority law students later in their legal careers. This article brings together these two parallel fields of research in an effort to show that the undertraining of law students creates different, and much more detrimental, consequences for the post-J.D. careers of women and minority attorneys.

This article will focus primarily on the intersection of those two groups because it is at this intersection that the effects of undertraining are most severely felt. Because of the combined effects of racial and gender discrimination, women attorneys of color and women law students of color are the miner's canaries of the legal profession.²⁰ By studying their experiences of undertraining in law schools and its ramifications in their early careers, we see magnified manifold the career consequences of insufficient preparation in professional school for all law students, especially for those who are different from the traditional norm of the profession, whether due to class, race, gender, ethnicity, sexual orientation, nationality, marital or parental status.²¹

To learn how women of color experience law school and the early years of law practice, this article turns to an emerging literature that is only now, in the past fifteen to twenty years, being written and published: narratives of professionalization by women attorneys of color. Not surprisingly, such a literature simply could not exist in the past. In 1970, there were only 446 black women attorneys in the entire United States.²² In 1990 there were 11,006.²³ Small as that latter number is, it has been large enough to produce a new genre of literature: individual stories of the legal education and career paths of women attorneys of color. This nascent literature reflects great diversity in those paths, just as the legal profession itself encompasses more than just lawyers in big law firms. Thus, there are memoirs by civil rights activists Pauli Murray,²⁴ Marian Wright Edelman,²⁵ Flo Kennedy,²⁶ Ada Lois Sipuel Fisher²⁷ and Constance

20. See LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002) (borrowing their metaphor for race in America). The miners used canaries to detect dangerous methane and carbon monoxide gases in the mines. Because of the canaries' size and highly sensitive metabolism, they would stop singing and die when exposed to levels of toxins still too low to impair humans. *Id.* at 11.

21. Race and gender can serve as "a diagnostic device, an analytical tool, and an instrument of progress" following Lani Guinier's recommendation for "racially literate institutions." Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 201 (2003). Further, Guinier's article states that "[r]ace . . . reveals rather than produces the stress on institutional resources that undermines the connection between education and democracy, a connection that the Court in Grutter and Gratz recognized as essential Used as a lens . . . race helps detect the deeper issues confronting public institutions of higher education." *Id.* at 120.

22. *REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS* 7 (J. Clay Smith Jr. ed., 1998). In 2000, the U.S. Census counted 16,415 non-Hispanic Black female lawyers in the United States. A.B.A. Commission on Racial and Ethnic Diversity in the Profession, *Statistics about Minorities in the Profession from the Census*, <http://www.abanet.org/minorities/links/2000census.html> (last visited April 3, 2009).

23. *Id.*

24. PAULI MURRAY, *THE AUTOBIOGRAPHY OF A BLACK ACTIVIST, FEMINIST, LAWYER, PRIEST, AND POET* (1989).

25. MARION WRIGHT EDELMAN, *LANternS: A MEMOIR OF MENTORS* (1999).

26. FLO KENNEDY, *COLOR ME FLO: MY HARD LIFE AND GOOD TIMES* (1976).

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Baker Motley.²⁸ There are memoirs by former corporate lawyers: tax-attorney-turned-writer Gwendolyn Parker²⁹ and expatriate-lawyer-in-Paris Janet McDonald.³⁰ There are two autobiographies by U.S. Congresswomen, Barbara Jordan³¹ and Eleanor Holmes Norton;³² and two by law professors, Anita Hill³³ and Patricia J. Williams.³⁴ There are also the published memoirs of criminal-defense attorney Evelyn A. Williams,³⁵ television personality and lawyer Star Jones,³⁶ gang-member-turned-lawyer Cupcake Brown,³⁷ and lawyer-journalist Debra Dickerson.³⁸ There are, in addition, collections of shorter narrative pieces by women attorneys of color, including *Rebels in Law: Voices in History of Black Women Lawyers*³⁹ and *Dear Sisters, Dear Daughters*.⁴⁰

Part I of this article provides a brief history of the evolution of law schools in the United States, explaining how law schools came to compete with and partially replace the traditional apprenticeship model of becoming a lawyer. A history of efforts to reform the law school curriculum by introducing more practice-oriented education is followed by a discussion of the most recent efforts, including the MacCrate Report, *Narrowing the Gap; Teaching and Learning Professionalism; Best Practices for Legal Education*; and the Carnegie Report, *Educating Lawyers: Preparation for the Profession of Law*. Part I concludes with an overview of studies of the career obstacles that women and minority attorneys face, with particular attention to the work of David Wilkins and Mitu Gulati on minority attorneys in elite corporate law firms.

Part II, the heart of this article, looks at what women attorneys of color say about their law school and early career experiences, through an emerging literature of narratives of professional training. Part II argues that reading these narratives through the lenses of the two parallel fields of study described in Part I illuminates how one problem—the undertraining of law students—contributes to the other—the career obstacles faced by new lawyers. The article argues that this undertraining occurs in two ways that disproportionately disadvantage women and people of color: through a curriculum narrowly focused on the

27. ADA LOIS SPUDEL FISHER, *A MATTER OF BLACK AND WHITE* (U. Oklahoma Press, 1996).

28. CONSTANCE BAKER MOTLEY, *EQUAL JUSTICE UNDER LAW: AN AUTOBIOGRAPHY* (1998) [hereinafter *EQUAL JUSTICE UNDER LAW*].

29. GWENDOLYN M. PARKER, *TRESPASSING: MY SOJOURN IN THE HALLS OF PRIVILEGE* (1997).

30. JANET MCDONALD, *PROJECT GIRL* (1999).

31. BARBARA JORDAN & SHELBY HEARON, *BARBARA JORDAN: A SELF PORTRAIT* (1979).

32. JOAN STEINAU LESTER ET AL., *FIRE IN MY SOUL* (2003).

33. ANITA HILL, *SPEAKING TRUTH TO POWER* (1997).

34. PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* (1995).

35. EVELYN A. WILLIAMS, *INADMISSIBLE EVIDENCE* (1993).

36. STAR JONES, *YOU HAVE TO STAND FOR SOMETHING, OR YOU'LL FALL FOR ANYTHING* (1998).

37. CUPCAKE BROWN, *A PIECE OF CAKE* (2006).

38. DEBRA J. DICKERSON, *AN AMERICAN STORY* (2000).

39. *REBELS IN LAW*, *supra* note 22.

40. *DEAR SISTERS, DEAR DAUGHTERS: WORDS OF WISDOM FROM MULTICULTURAL WOMEN ATTORNEYS WHO'VE BEEN THERE AND DONE THAT* (Karen Clanton ed., 2000).

acquisition of legal analytical skill, and through a student culture—to which grading curves and faculty attitudes contribute—that perpetuates what this article calls the “myth of effortless genius.” This myth encourages many students to disengage from law school, in effect compounding the consequences of the formal curricular undertraining. Recent psychological research by Carol Dweck and Bonita London suggests why women and minority students may be particularly vulnerable to that myth and to the self-undertraining that is its consequence.⁴¹

Finally, Part III gleans from the narratives of women attorneys of color the qualities most often associated with successful legal learning. The article recommends that all proposals for legal curricular reform, including the very promising recent Carnegie Report, be evaluated by those criteria to determine how well they will prepare all law students for the challenges of modern law practice. In addition, the article argues that curricular reform proposals like the Carnegie Report should be more explicit about how their proposed reforms will help law schools achieve the democratic civic missions they often proclaim.

I. APPRENTICESHIP THEN AND NOW: THE EVOLUTION OF U.S. LEGAL EDUCATION

Legal education in the United States began on the model of English legal education that the colonists brought with them.⁴² It was a system of personal apprenticeship that had its roots in kinship, that is, the relationship of father to son.⁴³ When it was not literally an attorney-father training his apprentice-son in his own profession, fathers arranged for their sons to apprentice with other relatives, friends, or colleagues.⁴⁴ Indeed, in the English system, the apprentice lived at the home of his master and became part of his family, like an adopted son.⁴⁵ In England, and then in the United States following the English model, universities offered law-related courses as part of a gentleman’s liberal arts

41. Lisa S. Blackwell et al., *Implicit Theories of Intelligence Predict Achievement Across an Adolescent Transition: A Longitudinal Study and an Intervention*, 78 CHILD DEV. 246 (2007); Andrei Cimpian et al., *Subtle Linguistic Cues Affect Children’s Motivation*, 18 PSYCHOL. SCI. 314 (2007); Carol S. Dweck, *Is Math a Gift? Beliefs That Put Females at Risk*, in WHY AREN’T MORE WOMEN IN SCIENCE (Stephen J. Ceci and Wendy M. Williams eds., 2007) [hereinafter *Is Math a Gift?*]; Jennifer A. Mangels et al., *Why Do Beliefs about Intelligence Influence Learning Success? A Social Cognitive Neuroscience Model*, 1 SOC., COGNITIVE, & AFFECTIVE NEUROSCIENCE 75–86 (2006). See also Bonita London et al., *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies to Study Law Student Engagement*, 30 HARV. J.L. & GENDER 389 (2007) [hereinafter *Studying Institutional Engagement*]; Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-Method Approach to Studying Individual Engagement and Institutional Change*, 60 VAND. L. REV. 455, 480–81 (2007) [hereinafter *Psychological Theories of Educational Engagement*].

42. Michael Burrage, *From Practice to School-Based Professional Education: Patterns of Conflict and Accommodation in England, France, and the United States*, in THE EUROPEAN AND AMERICAN UNIVERSITY SINCE 1800: HISTORICAL AND SOCIOLOGICAL ESSAYS 184 (Sheldon Rothblatt & Bjorn Wittrock eds., 1993).

43. *Id.*

44. *Id.*

45. *Id.*

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curriculum, supplementing but not replacing the apprenticeship.⁴⁶ At Oxford and Cambridge, a young man could attend lectures on Roman law, international law, jurisprudence, and constitutional history, but not on English common law.⁴⁷ In the United States, university law programs offered courses in moral and legal philosophy, the law of nations, and political economy.⁴⁸

Much has been written about the Langdell revolution in legal education—Harvard Law School Dean Christopher Columbus Langdell’s introduction of the case method of study, which treated law as a science whose principles could be learned inductively from reading excerpts of appellate decisions collected in casebooks.⁴⁹ As others have noted, law schools still inhabit Langdell’s revolution today.⁵⁰ The features of his case method of legal education are familiar to anyone who has been a first-year law student in a U.S. law school in the past hundred years. In classrooms with large numbers of students, often more than a hundred, professors—who are lawyers but unlikely to have significant practice experience—question students about the elements of the case excerpts they have read. Through this “Socratic” questioning, students develop the analytical skills that constitute legal reasoning—they are taught to “think like a lawyer.” This cluster of abilities—to spot legal issues in a fact pattern, to extract rules from cases, to organize rules into a body of general principles, and to memorize those rules and principles—is then tested on bar examinations that are gateways—or tollbooths—for admission to the legal profession.

In the late-nineteenth and early-twentieth century, university-based law schools displaced apprenticeships as the standard form of training; by the mid-twentieth century they had also displaced independent proprietary schools, such as night schools and correspondence schools that trained immigrants and the working class.⁵¹ The ascendancy of the Langdellian university-based law school was supported and reinforced by the organized bar, through the A.B.A. and regional bar examinations, and through accreditation standards set by the American Association of Law Schools.⁵²

Almost simultaneous with the rise of Langdellian law schools was the emergence of its critics. As early as 1914, a report by Joseph Redlich, *The Common Law and the Case Method in American University Law Schools*, sponsored by the Carnegie Foundation, faulted the case method for its narrowness, for under-preparing students, for encouraging favoritism of top students, and for the absence of clinical training.⁵³ These criticisms were repeated in a second Carnegie report authored by Alfred Z. Reed in 1921, titled *Training for the Public Profession of the Law*.⁵⁴ Reed saw the case method taught in universities as elitist,

46. *Id.* at 145, 152.

47. *Id.* at 145.

48. Brian J. Moline, *Early American Legal Education*, 42 WASHBURN L.J. 775, 794 (2004).

49. See, e.g., ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s 51–72 (1983).

50. Menkel-Meadow, *supra* note 13, at 561.

51. See Burrage, *supra* note 42, at 154–55; see also, STEVENS, *supra* note 49, at 191–204.

52. Burrage, *supra* note 42, at 154–55.

53. See STEVENS, *supra* note 49, at 117–19; see also JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS (1914).

54. REED, *supra* note 9. See STEVENS, *supra* note 49, at 120–21.

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appropriate only for educating a particular type of law student (one prepared by an elite undergraduate education) for a particular type of practice (the elite bar).⁵⁵ In the following decade, legal realist Jerome Frank argued that law schools must teach a wider range of practical legal skills; his famous essay, *Why Not a Clinical Lawyer School?*, recommended that law schools adopt the apprenticeship model.⁵⁶

Despite the growth in clinical legal education since the 1960s, these criticisms have been reiterated in more recent years, with recurrent pleas for curricular reform.⁵⁷ In 1992, Judge Harry Edwards, in *The Growing Disjunction Between Legal Education and the Legal Profession*, chastised law schools for emphasizing “abstract theory at the expense of practical scholarship and pedagogy.”⁵⁸ He recommended that non-Socratic methods such as role-playing and problem-solving be used, that statutes and regulations be studied rather than just case decisions, that class size be reduced, and that legal writing receive greater attention.⁵⁹ That same year saw the publication of the A.B.A.’s MacCrate Report, *Narrowing the Gap*, which proposed more skills and values instruction, with greater feedback from instructors evaluating students’ performances of lawyering tasks.⁶⁰ The next decade saw similar proposals in the 2007 report *Best Practices for Legal Education* published by the Clinical Legal Education Association.⁶¹ Advocating “context-based education” that allows students to practice legal problem-solving in simulated or real legal contexts, its authors exhorted law schools to reform their curricula by focusing on outcomes: “what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.”⁶² However, the authors of the report were well aware that their suggestions for change were hardly unprecedented. “We hesitated to undertake this project,” the authors confessed. “Some thought it would be a total waste of time, or, at best, an academic exercise . . . [because] the resistance of the legal academy to change is so well-entrenched.”⁶³

The most recent and most talked about proposal to reform legal education, the 2007 Carnegie Report, *Educating Lawyers: Preparation for the Profession of Law*, with its recommendation that the law school curriculum comprehensively integrate the teaching of doctrine, practical skills, and professional identity, is thus just one in a nearly century-long history of similar

55. REED, *supra* note 9. See STEVENS, *supra* note 49, at 120–21.

56. Frank, *supra* note 9.

57. For many years, clinical law programs throughout the United States were generously funded by the Ford Foundation, through the Council on Legal Education for Professional Responsibility. However, law school clinics have not been able to fully remedy the deficits in the Langdellian curriculum. Clinical programs are expensive, often not available to all students, and typically not integrated into the doctrinal curriculum. Further, clinical education has been criticized for being undertheorized, anti-intellectual, and too haphazard and disorganized. See, e.g., Sullivan, *supra* note 4 at 92–94; Menkel-Meadow, *supra* note 13 at 577–79; Stevens, *Law School*, *supra* note 48 at 240–42..

58. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992).

59. *Id.* at 63.

60. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *supra* note 10.

61. ROY STUCKEY ET. AL., *supra* note 12.

62. *Id.* at 6.

63. *Id.* at 210.

reform projects.⁶⁴ Seemingly immune and impervious, the Langdellian model still remains largely intact into the twenty-first century. Instead of law schools adopting the apprentice model, as Frank proposed, the late-twentieth century saw “the revival of apprenticeship following academic education,” with underprepared law school graduates dependent on their first legal employers to instruct them in the basic legal skills needed to practice.⁶⁵ Defenders of traditional legal education believe this is as it should be—that legal practitioners, not law schools, are best situated to teach new lawyers practical skills and professionalism.⁶⁶

Langdell’s critics offer many reasons to reform legal education, but possibly only Reed, in 1921, argued that the Langdellian model was elitist and disadvantaged some groups of students.⁶⁷ The recent Carnegie Report, for instance, does not consider how the Langdellian law school’s undertraining might handicap some law school graduates more severely than others. It offers instead only vague—though lofty—declarations that “a focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.”⁶⁸

It should not be a surprise that the apprenticeship model, transplanted to the corporate law firm but with its roots in father-son kinship, does not work well where women attorneys and attorneys of color must depend on voluntary mentorship by white male senior attorneys. In the past fifteen years, excellent scholarly articles and studies by bar association groups have identified and analyzed numerous obstacles to professional advancement that women and attorneys of color face in their early careers, many of which are related to inadequate mentoring. Most of these studies do not, however, look back to the

64. SULLIVAN ET AL., *supra* note 4. The Carnegie Report presents the results of a study of current legal education in the United States as compared to education in other professions and as evaluated by the standards of contemporary research on how learning occurs, particularly “expert learning,” the novice’s acquisition of the knowledge, skills and judgment needed for expertise at a profession. Over two semesters, the Carnegie research team visited sixteen law schools. Consistent with many earlier critiques of legal education, they find that the traditional law school model focuses too exclusively on analysis of legal doctrine and fails to provide adequate training in the full panoply of types of legal thinking and legal skills that are the foundation of basic professional competence. *Id.* A widely influential summary of the new learning theory, recommended by the Carnegie authors, is HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (J.D. Bransford, A.L. Brown & R.R. Cocking eds., 1999). The Carnegie authors also build on Professor Gary Blasi’s study of how recent cognitive science research illuminates the nature of lawyering expertise. See Blasi, *supra* note 13. Another, earlier work cited by the Carnegie authors on how professional competence is defined and taught in the legal academy is *Law Schools and the Construction of Competence*. See Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993).

65. RICHARD L. ABEL, AMERICAN LAWYERS 224 (1989).

66. See SULLIVAN ET AL., *supra* note 4, at 92.

67. See REED, *supra* note 9.

68. See SULLIVAN ET AL., *supra* note 4, at 13. A different critique of the Carnegie Report is offered by Professor Kris Franklin, who believes that the report does not go far enough in challenging the traditional law school model. According to Franklin, the Report accepts as given that doctrinal courses teach students to “think like a lawyer” while clinical and lawyering courses teach students to “act like a lawyer.” Franklin argues that clinical courses, particularly introductory-level simulation-based courses, are “excellent places to learn and reinforce basic legal analysis.” Kris Franklin, *Sim City: Teaching “Thinking like a Lawyer” in Simulation-Based Clinical Courses*, U. ARK. L. REV. (forthcoming).

attorneys' legal education to consider how their undertraining in law school might have contributed to their early-career difficulties.⁶⁹ A 1994 report, *The Burdens of Both, the Privileges of Neither*, a joint project of the A.B.A. Commission on Women in the Profession and the Commission on Opportunities for Minorities in the Profession, provides much needed information about the experiences of multicultural women attorneys in law schools and in their careers. However, it only admonishes that "there must be a stronger commitment in law schools against racism and sexism."⁷⁰ The more recent and more comprehensive survey by the A.B.A. Commission on Women in the Profession, the 2006 report *Visible Invisibility: Women of Color in Law Firms*, does not consider law school experiences at all.⁷¹

One exception is the scholarship of Professors David Wilkins and Mitu Gulati on the institutional structure of elite corporate law firms and how the practices of those firms may systematically disadvantage particular groups.⁷² They suggest that elite law firms' hiring criteria may influence law students' course selection and decisions regarding extracurricular activities.⁷³ To the extent that minority law students need stronger traditional "signals" of merit in order to be hired—high grade point averages or membership in law review—those students may avoid notoriously difficult advanced corporate classes like corporate taxation, commercial transactions, and securities regulation.⁷⁴ In doing so, they trade higher grades in easier classes for the potential to learn specialized information that might give them a competitive edge early in their careers. Wilkins and Gulati explain:

Although black candidates who invest disproportionately in signals may increase their chances of being hired, if we make the plausible assumptions that there is at least some tradeoff between investing in signals and investing in skills (if for no other reason than the finite nature of time), and that beginning work with skills is positively correlated with success on the job, these workers may also have a decreased chance of actually winning the tournament.⁷⁵

Since Wilkins and Gulati focus primarily on law firms, they support those who advocate fundamental restructurings of elite firm practice rather than considering the need for a fundamental restructuring of legal education.⁷⁶

69. Other scholarship has examined the difficulties experienced by women and minorities in law school, but these studies do not focus on undertraining or its early-career consequences. See *supra* note 19.

70. See *THE PRIVILEGES OF NEITHER*, *supra* note 15, at 14 (emphasis in original).

71. See *VISIBLE INVISIBILITY*, *supra* note 14.

72. See David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493 (1996); David B. Wilkins & G. Mitu Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 VA. L. REV. 1581 (1998) [hereinafter *Reconceiving the Tournament of Lawyers*].

73. *Reconceiving the Tournament of Lawyers*, *supra* note 72, at 521–22, 555–56.

74. *Id.* at 555–56.

75. *Id.* at 524.

76. *Id.* at 611.

As an aside, though, Wilkins and Gulati recommend that law schools could also help by offering more courses that emphasize practical lawyering skills so that students, through their grades and work-product in such courses, could signal to hiring committees their competence at the wider range of skills lawyers need to succeed in elite firms.⁷⁷ Separately, Professor Wilkins has advocated that law schools could better prepare students for the law firm “tournament” by providing courses about the legal profession, professional identity, and career-building.⁷⁸ He also has argued that law schools should teach black students how to recognize and negotiate potential conflicts between the needs of corporate clients and the interests of the black community.⁷⁹ The remainder of this article looks at the autobiographical writings of women attorneys of color to better understand the nature of the undertraining experienced by minorities and women in law school and its impact on their early careers. In doing so, it hopes to build on the preliminary insights of Professors Wilkins and Gulati about how legal education contributes to post-J.D. career obstacles.

II. NARRATIVES OF PROFESSIONALIZATION BY AFRICAN-AMERICAN WOMEN LAWYERS

There is an old saying that if you hate law school, you will love practice, and if you love law school, you will hate practice. Like other maxims, it oversimplifies and exaggerates, but it also reflects truths. One truth is the long-standing disjunction between legal education and legal practice. Another is the range of student responses to the case method’s narrow focus on analytical skill. The stories that African-American women attorneys tell about their legal education reflect that same range, from sharp dissatisfaction to intellectual gratification. This section will begin by focusing mainly on those dissatisfied with the undertraining they received as law students. For African-American women attorneys, this dissatisfaction can be particularly acute because of the difficulties they often must surmount to get to law school, and the additional difficulties they often face afterward in acquiring the skills necessary to practice law. These stories are then contrasted with memoirs of Howard Law School during the civil rights movement, where the divide between the academic study of legal doctrine and the practice of law was less stark.

For some students, curricular undertraining in law school is compounded by self-undertraining: a disengagement from law school in its broadest sense, including from law professors, law students, clinics, internships, and extra-curricular activities like moot court, law journal, student government, or clubs. There are multiple causes of this disengagement, including stereotype-threat,

77. *Id.* at 612.

78. David B. Wilkins, *On Being Good and Black*, 112 HARV. L. REV. 1924 (1999) (reviewing PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (1999)); David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach about the Profession*, 49 J. LEGAL EDUC. 76 (1999).

79. David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981 (1993).

value-clash, a dissonance between cultural identity and professional identity, isolation, feelings of invisibility or marginalization, and, of course, overt as well as subtle discrimination.⁸⁰ These experiences are common to almost all of the fifteen full-length professional memoirs considered here, as well as many of the shorter essays and letters describing law school. The next section of this article will highlight one particular cause of disengagement that is related to the way law schools assess student learning. I call this the “myth of effortless genius.” The myth is perpetuated and reinforced by grade curves, coursework evaluated by only a single final exam, student ranking, and competitions for law review and moot court. It says, in essence, “either you have it or you don’t,” as if legal talent were inborn and fixed—some have a lot, some have less, some have none, and there is nothing anyone can do to change that.⁸¹ For some students, rather than attempting to disprove the myth, the rational response is to disengage. Why bother if no amount of hard work can allow one to compete with those who achieve through “effortless genius”? The effect of the disengagement, however, is to cut off the student from many opportunities to acquire legal skills outside the classroom while in law school.⁸²

The final part of this section looks at what African American women attorneys say about their experiences as new lawyers. As varied as were the settings of these early career experiences, their chronicles take one of two basic narrative forms: a story of disillusionment, even betrayal; or a story of redemption, a grace narrative. Anita Hill’s *Speaking Truth to Power* is the paradigm of the former, while Constance Baker Motley’s *Equal Justice Under Law* is the paradigm of the latter.

A. Stories of Undertraining

1. Curricular Undertraining, and the Howard Law Exception

Although Motley’s autobiography is ultimately a story of a legal career redeemed, she is one of the harshest critics of traditional legal education.⁸³ The

80. See London et al., *Psychological Theories of Educational Engagement*, *supra* note 42, for a comprehensive analysis of the institutional, situational, and individual factors in law student disengagement. See also Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y, 119 (1997); GUINIER ET AL., *supra* note 19.

81. See Blackwell et al., *supra* note 41; Cimpian et al, *supra* note 41; *Is Math a Gift?*, *supra* note 41; Mangels et al., *supra* note 41; *Studying Institutional Engagement* *supra* note 41; *Psychological Theories of Educational Engagement* *supra* note 41.

82. See Blackwell et al., *supra* note 41; Cimpian et al, *supra* note 41; *Is Math a Gift?*, *supra* note 39; Mangels et al., *supra* note 41; *Studying Institutional Engagement* *supra* note 41; *Psychological Theories of Educational Engagement* *supra* note 41.

83. In some of the autobiographies by women attorneys of color, the critique is directed less at the curriculum than at the discordance between their own educational and personal backgrounds, on the one hand, and the expectations and culture of the school on the other. Thus, Barbara Jordan talked about arriving at Boston University Law School and thinking that everyone else was speaking a foreign language that they had grown up hearing in homes where fathers were lawyers, and that “in order to compensate for what I had missed in earlier years, I would have to work harder, and study longer, than anybody else.” JORDAN & HEARON, *supra* note 31, at 88-91. Anita Hill at Yale Law School described having to bridge “barriers of race, gender, class, geography, and education.” HILL,

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first African-American woman to be appointed a U.S. federal court judge, Motley attended Columbia Law School in the mid-1940s.⁸⁴ Law school, she wrote, was “an unmitigated bore, wholly theoretical, esoteric, and without practical application.”⁸⁵ Glendora McIlwain Putnam, a contemporary of Motley who went on to become Assistant Attorney General for Massachusetts, attended Boston University Law School. She described it as a “warehouse” with hundreds of students in each lecture class, where success or failure on true-or-false tests was the only measure of one’s learning⁸⁶ “So, we mostly made lawyers out of ourselves,” she wrote.⁸⁷ Activist and civil rights advocate Florynce Kennedy attended Columbia Law School a few years after Motley, and expressed similar, (if blunter) criticism:

[L]aw school is a kind of obstacle course. They want an almost mathematical mind, the kind of person who can walk past a pool of blood and think, “what a beautiful shade of red”—they call that “objectivity.” . . . I thought I’d like criminal law, but they managed to shit-cover even that chocolate. Psychology and law are inherently interesting subjects which they manage to make totally boring, as part of the obstacle course. They don’t really want you to get through, so they make it so difficult and boring you’re ready to blow your brains out.⁸⁸

Roughly a decade later, Marian Wright Edelman, a civil rights activist, founder of the Children’s Defense Fund, and the first African American admitted to the Mississippi Bar, experienced Yale Law School as “deadly dull.”⁸⁹ Motivated to attend law school by the desire to fight racial discrimination, she felt “[d]epressed by my complete lack of interest in property and contracts and corporations and legal procedure courses,” which seemed unconnected to the urgent civil rights cases she hoped to take on.⁹⁰

A few of these narratives of professionalization depict law school’s narrow focus on analytical skill in a more positive light. Anita Hill, a law professor and former special assistant to the Chairperson of the U.S. Equal Employment Opportunity Commission, described her final year at Yale Law School, from which she graduated in 1980, as “intellectually nurturing, not simply challenging” (though she describes herself as unprepared in some ways for the law firm she joined in Washington, D.C. after graduation).⁹¹ Gwendolyn

supra note 33, at 50. Generally, whatever the precise nature of their comments on their legal education, the authors of these narratives tend to devote relatively little space in their stories of professionalization as attorneys to their law school years, as if the less said, the better. When law professor Patricia J. Williams prepared to write a *New Yorker* essay about herself and the other nine black women graduates of Harvard Law School, Class of 1975, twenty years after their graduation, they strongly advised her, “Don’t make it depressing.’ ‘Focus on the positive.’ ‘It happened. But don’t say that.’” WILLIAMS, *supra* note 34, at 88.

84. EQUAL JUSTICE UNDER LAW, *supra* note 28, at 59.

85. *Id.*

86. REBELS IN LAW, *supra* note 22, at 32.

87. *Id.*

88. KENNEDY, *supra* note 26, at 39–40.

89. EDELMAN, *supra* note 25, at 69.

90. *Id.* at 68.

91. HILL, *supra* note 33, at 52, 58.

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Parker, a former international tax attorney, found that the legal education at New York University School of Law in the mid-1970s valued “one attribute . . . above all others . . . an ability to poke holes in others’ arguments . . . all other attributes were subsumed under this one pointy goal.”⁹² She discovers that it is a game at which she excels, and she uses it to her advantage in her role as the “racial avenger,” waging intellectual battles against white male students.⁹³

The most favorable, most appreciative accounts of law school come from graduates of Howard University Law School in the 1930s and '40s.⁹⁴ What they praise is the opportunity they were given to be close to the actual practice of law at the highest level. Mahala Ashley Dickerson, a 1948 graduate who has had a long, distinguished career as a practicing attorney in Alaska, relates how inspiring it was when “Thurgood Marshall and other great civil rights lawyers about to argue cases before the U.S. Supreme Court would allow the students to play devil’s advocate and critique their proposed arguments aimed at various justices then sitting on the Court.”⁹⁵ Civil rights activist Pauli Murray, a 1944 graduate, offers similar praise:

Howard Law School provided excellent training for anyone devoted to the struggle to enforce civil rights. We had a small student body, and students and faculty shared a camaraderie born of our mutual commitment to the battle against racial discrimination. Our faculty included prominent lawyers who won brilliant Supreme Court victories in the 1940s and 1950s Many of the briefs in key cases before the Supreme Court were prepared in our law library, and exceptionally able students were rewarded for excellence by being permitted to do research on a brief under the supervision of a professor. When a major case was to be presented to the Supreme Court, the entire school assembled to hear dress rehearsal arguments. Faculty members and alert students subjected the NAACP attorneys who argued these cases to searching questions.⁹⁶

Richard Kluger, in *Simple Justice*, his famous history of *Brown v. Board of Education*, confirms and elaborates these stories:

Howard Law School became a living laboratory where civil-rights law was invented by teamwork. There were probably never more than fifty or sixty students enrolled at any one time, and that was all right with [Charles] Houston [Dean of the law school and NAACP Litigation Director], who was not after numbers but intensive training of young minds that shared his dream. They all

92. PARKER, *supra* note 29, at 146.

93. *Id.* at 145.

94. The contemporary equivalents are stories about law students working in Yale Law School’s Lowenstein International Human Rights Clinic under the direction of Harold Koh, fighting for the rights of Haitian refugees detained at Guantanamo; and Georgetown Law Center students working under the direction of Neal Katyal, fighting the government’s detention policies for alleged terrorists at Guantanamo. See BRANDT GOLDSTEIN, *STORMING THE COURT* (2005); Neal Kumar Katyal, Hamdan v. Rumsfeld: *The Legal Academy Goes to Practice*, 120 HARV. L. REV. 66 (2006). For discussions of the limitations of high-profile impact litigation as a model for clinical education, see Richard J. Wilson, *Many Guatanamos: A Reflection on the Work of Human Rights Clinics*, 13 No. 3 HUM. RTS. BRIEF 46 (2006); Stacy Caplow, “Deport All the Students”: *Lessons Learned in an X-treme Clinic*, 13 CLINICAL L. REV. 633 (2006) (book review).

95. REBELS IN LAW, *supra* note 22, at 30.

96. MURRAY, *supra* note 24, at 182.

worked on real briefs for real cases and accompanied Houston and other faculty members to court to learn procedure and tactics.⁹⁷

2. *Self-Undertraining*

Constance Baker Motley, the harshest critic of legal education among these autobiographers, sustained her interest in a legal career and received the kind of practical legal education missing from her Columbia courses by taking a part-time legal job beginning in her second year of law school.⁹⁸ Although Columbia forbade first-year students from working, and strongly discouraged second- and third-year students, Motley volunteered at the NAACP Legal Defense Fund in the beginning of her second year and was hired there as a law clerk in the second half of that year.⁹⁹

Other students, however, respond to the circumscribed curriculum and competitive culture of law school by disengaging; withdrawing not only from active involvement in coursework, but from student life and extracurricular opportunities—from all things law-related.¹⁰⁰ In effect, the students compound the undertraining of the traditional law school curriculum by self-undertraining. There are multiple causes of such disengagement,¹⁰¹ and they are noted in many of the autobiographies of women attorneys of color, but this article will examine just one: the common law school myth of “effortless genius.” This myth is a subtype of what psychologist Carol Dweck calls the “fixed mindset,”¹⁰² or an “entity theory of intelligence,”¹⁰³ a belief that intelligence and talent are inborn and fixed in quantity from birth.¹⁰⁴ In law school, the emphasis on ranking rather than educating students—with single-exam courses testing a narrow skill-set, graded in conformity with a mandatory curve, and professors providing little if any feedback¹⁰⁵—promotes the assumption, among both faculty and students, that

97. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 129 (Vintage Books 2004) (1975).

98. *EQUAL JUSTICE UNDER LAW*, *supra* note 28, at 58.

99. *Id.*

100. See London et al., *supra* note 41 (presenting a comprehensive analysis of the institutional, situational, and individual factors in law student disengagement). See also Sturm, *supra* note 80; GUINIER ET AL., *supra* note 19.

101. See *id.*

102. CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 114 (2006).

103. CAROL S. DWECK, *SELF THEORIES: THEIR ROLE IN MOTIVATION, PERSONALITY AND DEVELOPMENT* 73 (2000) [hereinafter *SELF THEORIES*].

104. Carol S. Dweck and her colleague Claudia M. Mueller famously compared the effect on motivation and performance of praising intelligence vs. praising effort. In an experiment with over 400 fifth graders, they praised half for doing well on a test because they were smart, and praised the other half for succeeding because of their effort. Each group was then given a choice between an easy task that they'd do well on but learn little from, and a difficult task from which they'd learn a lot but risk errors. The students praised for intelligence mostly chose the easy task while the students praised for effort chose the more challenging task. Claudia M. Mueller & Carol S. Dweck, *Intelligence praise can undermine motivation and performance*, 74 J. OF PERSONALITY AND SOCIAL PSYCHOLOGY 1421-36 (1998).

105. See Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 537-39 (2007).

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some students are just “naturally” gifted at law, and that all the hard work in the world will not overcome an inborn “deficit” in such talent.

Debra Dickerson, a 1995 graduate of Harvard Law School, was in her thirties when she began her legal education after serving in the U.S. Air Force for twelve years as an intelligence officer.¹⁰⁶ Inspired by a profile she read of Thurgood Marshall in *Washingtonian Magazine*, Dickerson decided that a law degree would allow her to become a social reformer, perhaps one day creating her own non-profit organization to advance the rights of women and blacks.¹⁰⁷ She brought her social activist ambitions, her maturity, and her years of military training and discipline to first-year legal studies at Harvard. “I was very serious about my studies at HLS . . . especially the first semester of the first year, which pretty much decides your entrée into fast-track law.”¹⁰⁸ She joined the Black Law Students Association, joined a study group as its only woman member, and became a research assistant to Professor Randall Kennedy, an expert on civil rights and race relations law.¹⁰⁹ She was, in other words, completely and intensely engaged by law school. And she was fearless, unafraid to compete with students from prep school and Ivy League college backgrounds with higher LSAT scores, and unafraid of Socratic questioning in large lecture halls by some of Harvard’s famously brilliant law professors:

Twice I saw women in the chosen row [to be called on by the professor] scurry red-faced out of class rather than be called on. How many of them had perfect LSATs? Twelve years of real-world contingencies and briefing senior officers who’d rather bite your head off than let you take a breath took the starch out of Arthur Miller and Alan Dershowitz for me. I respected them but I had no fear of them . . .¹¹⁰

Although she studied so much that she “did permanent damage to [her] eyes” and needed her eyeglass prescription increased three times, she earned only B’s in her first semester.¹¹¹

The shock left her “reeling, as were the other 95 percent of us who were now officially no longer the smartest kid in class.”¹¹² She recovered, she said, “by writing about it in the school newspaper, the *Record*” and then agreeing to write a weekly column.¹¹³ “Now, realizing I could make those same B’s with a lot less effort, I began a weekly *Record* column that I continued until graduation.”¹¹⁴ Thus, she disengaged from legal education, deciding instead to become a writer. She did not connect it to the grades and the grade-curve, or to the myth that only born legal-geniuses can score A’s at Harvard Law. She did not consider fighting

106. For a discussion of her time in the Air Force, see DICKERSON, *supra* note 38, at 89–134. For a discussion of her time in law school, see *id.* at 243–79.

107. *Id.* at 229–30.

108. *Id.* at 245.

109. *Id.* at 245–51.

110. *Id.* at 245.

111. *Id.* at 252.

112. DICKERSON, *supra* note 38, at 152.

113. *Id.*

114. *Id.*

back, studying harder, seeking help from professors, or trying again for the scarce A's.

Immediately after telling the story of first-year grades, she said, "To this day, I have no idea why or how I started writing."¹¹⁵ That first summer after law school, she used part of the summer to write fiction rather than do legal work, and did the same in the second half of the summer after her 2L year, giving up an opportunity to begin to acquire basic legal skills not taught at Harvard.¹¹⁶ "By third year, I was skipping classes for the first time in my life and showing up unprepared . . . I was writing a bad novel instead."¹¹⁷

B. Early Career Narratives

1. *Betrayal or Disillusionment Stories*

When women attorneys of color describe their early career experiences after law school, they often describe finding themselves undertrained and unable to begin practicing law without the help of more experienced attorneys who can complete the education that law school began. The type of story they tell depends very much on what happened in those early years after law school. For many, sadly, it is a betrayal or disillusionment narrative: they arrive at their first legal job inadequately prepared by law school but ambitious and hopeful. Several years later they realize that while some of their law school contemporaries are advancing in their careers under the guidance of senior attorneys, they themselves are doing routine, low-level legal work and not developing into fully-trained lawyers. In its more extreme version, this narrative describes not the disillusionment caused by a lack of mentoring, but the betrayal of trust by bad mentors—those who abuse their power over the apprentice attorneys who depend on them.¹¹⁸

While law schools arguably are not responsible for the bad mentors, the inadequacy of the legal curriculum leaves undertrained prospective lawyers particularly vulnerable to such abuse—especially novice attorneys without the

115. *Id.*

116. *Id.* at 253.

117. *Id.* Paul Barrett tells a similar story about his college roommate Larry Mungin's experience at Harvard Law in the early 1980s. Mungin was impressed by a joke that Professor Dershowitz told his class as a humorous lesson in keeping grade competition in perspective. (Dershowitz himself graduated first in his class at Yale Law School.) "Two men are camping in a tent. They realize a huge bear is circling hungrily outside. One man begins to lace up his running shoes. 'Don't be silly,' the other man says. 'You can't outrun a bear.' 'I don't have to outrun the bear,' came the reply. 'I just have to outrun you.'" For Mungin, this means "the late-night library rats were wasting a lot of time, trying to make the top 5 percent of the class." "Mungin drew a lesson from the Dershowitz bear joke. He outran half the class, graduating in roughly the middle. He skipped extracurricular activities, didn't do research for a professor, or help poor people fight their landlords. Instead, he filled his plentiful spare time by reading and working out. His literary tastes ran from *People* magazine to Virginia Woolf . . . Every evening, seven nights a week, he put himself through an elaborate 90-minute regimen of weight-lifting and other exercises." PAUL BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA*, 73, 82–83 (1999).

118. See *infra* text accompanying notes 129–133.

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familial or business connections that might counterbalance the power disparities in the law firm. Corporate lawyer La Fleur C. Browne tells a typical disillusionment story:

Seven years ago, I decided to begin my legal career as an associate at the law firm of Dorsey & Whitney LLP in Minneapolis, Minnesota. I decided to work at a law firm to receive great training and for the diversity of work opportunities. I also wanted to work with intelligent individuals who, like me, wanted to become and assist in the development of good attorneys. I was wrong on all counts.¹¹⁹

She soon discovered there was no formal training, and that the department's "work allocator" distributed work not to ensure a diversity of informal training opportunities, but to unload assignments that other attorneys refused to work on.¹²⁰

[E]arly in my career, I found myself working on meaningless projects. I accepted some assignments because I had no other work and needed to meet my billable hours requirements. I accepted others because I was bored. It is simply no fun sitting eight hours each day with nothing to do. As a result of this lack of training, my work opportunities also became very limited. My lack of training now provided partners with an excuse to exclude me from various projects. When I asked to work on particular projects, they told me "La Fleur, I would have loved to put you on this project but you do not have the relevant experience in that area. If you work on this file, you will have to spend more time on the project than someone else with the relevant experience." As I became more senior, they added the excuse of cost: "We cannot afford to train you at your high billable rate," they said . . . I sadly discovered that most of the attorneys at the law firm cared little, if at all, about my professional progress. They did care about the progress of a few though. They cared about the progress of attorneys they had chosen based on personal affinity, to become "stars." The fairness of that concept still eludes me. I even once heard a white attorney say, "If I have work to give, I would much rather work with someone that looks like me."¹²¹

NYU Law School alumna Gwendolyn M. Parker worked for two partners in the Tax Department of Cadwalader, Wickersham & Taft.¹²² They provided the training and work opportunities that enabled Parker to learn and advance as a tax attorney at the firm, but the mentoring came at a price.¹²³ Both partners "were united in what appeared to me to be their deep disdain for the female sex."¹²⁴ While one partner behaved as if her very presence "was torture for him,"¹²⁵ the other "welcomed me into a meeting as if I were a courtesan invited to entertain the guests. 'Oh, Miss Parker,' he would gush, 'you are looking absolutely enchanting today. Absolutely enchanting.' Then he would ogle in what I

119. DEAR SISTERS, DEAR DAUGHTERS, *supra* note 40, at 138.

120. *Id.*

121. *Id.* at 138–39.

122. PARKER, *supra* note 29, at 161–62.

123. *See id.* at 161–63.

124. *Id.* at 162.

125. *Id.*

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presume he thought was an irresistible way. ‘That dress is most beguiling on you.’”¹²⁶ For Parker, the last straw, what persuades her finally to leave the firm, was the annual firm Christmas party, where the partners, both married and single, exploited the aspirations of the young working-class secretaries from Queens and Brooklyn, making sexual conquests of them.¹²⁷ “[I]t was like raping children,” Parker wrote:

Those girls from Queens really wanted to be queen for a day. Seeing them preening and preparing, you knew there was a dream in it—a dream of a house in the suburbs, of lunching in places like those we lunched in every day, of fancy dinners. If they would not become wives, the ultimate goal, and certainly a fantasy even for them, they would at least be the mistresses, but they couldn’t know that even that goal was out of their reach. The paralegals were the mistresses; the wives were the girls these men had met in college.¹²⁸

Law professor Anita Hill’s autobiography, *Speaking Truth to Power*, is the paradigm of the disillusionment narrative turned betrayal narrative. Beginning her legal career at a mid-size Washington D.C. law firm after graduating from Yale Law School, and, like most junior associates, in need of training in practical legal skills, she was disillusioned by the lack of mentoring and paucity of diverse, educative work assignments.¹²⁹ Hill wrote:

There were some exciting projects at Wald’s [Wald, Harkrader and Ross], but none were included among my assignments, many of which were in the area of banking law. This was not considered the most interesting or extensive part of the firm’s practice, so there wasn’t much competition among associates to do it . . . I did not receive the “choice assignment,” but rather was assigned to work with partners like the banking expert, who was thought to be difficult. Certainly, no other partner stepped in to take me under his or her wing or to teach me about functioning in what was for me a completely new environment.¹³⁰

Against this background of disillusionment, a job offer from a black attorney, to be his assistant when he became Assistant Secretary for Civil Rights in the Department of Education, was welcome.¹³¹ “Perhaps,” she wrote, “this would be the dream job I had hoped for [at Yale, when I accepted the offer from Wald Harkrader and Ross].”¹³² Insecure after her law firm experience, with minimal practical legal training, and no other mentors or friends in the Education Department, or later in the Equal Employment Opportunity Commission, Hill was entirely dependent on her new boss to provide her with mentoring and the kind of career development she did not receive at the law firm.¹³³ The story of what went wrong—how her prospective mentor betrayed

126. *Id.*

127. *Id.* at 168–70.

128. PARKER, *supra* note 29, at 169–70.

129. *See* HILL, *supra* note 33, at 56–57.

130. *Id.* at 56, 58.

131. *See id.* at 59–60.

132. *Id.* at 60.

133. *See id.* at 61–65.

her trust and abused his power by sexually harassing her on the job—is so famous that it is not necessary to reiterate the details here.¹³⁴ The harassment made her continuing employment untenable; after being hospitalized for severe stress, she decided to resign.¹³⁵ In effect, her career as a practicing attorney ended too—she left her government position and accepted a job at a law school, and has remained in academia ever since.¹³⁶

What if Anita Hill had been a medical doctor? An engineer? An accountant? An architect? Would she have been just as vulnerable to bad mentoring? Or would the professional schools in these other fields have prepared her to practice those professions without such dependence on personal mentoring?¹³⁷ One conclusion that can be drawn from Anita Hill's autobiography is that the undertraining of young lawyers by law schools leaves them vulnerable not just to a career-damaging lack of mentoring, but to career-destroying abusive mentoring. The inability of young lawyers to perform basic professional tasks independently creates an extreme dependence on mentors that can be an invitation to abuse by those so inclined.¹³⁸

2. *Stories of Redemption, or Hope*

Law professor Patricia Williams wrote, "I am a supremely fulfilled law professor My life has exceeded not only my parents' but my own wildest dreams. I feel fortunate every day in a hundred little ways."¹³⁹ That acute sense of career good fortune is also seen in the autobiographies of practicing attorneys who, early in their legal careers, found—or were found by—generous mentors willing to provide the post-law school legal training essential for successful practice. In the shadow of stories of career disillusionment and betrayal, these success stories speak so often of extraordinary good luck, of great fortune, and

134. The details of Clarence Thomas's behavior toward Anita Hill are recounted in Chapter Three of *Speaking Truth to Power*, HILL, *supra* note 3. See also, *Nomination of Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearings Before the Committee on the Judiciary, United States Senate*, 102d Cong. 273–331, 442–551 (1991).

135. HILL, *supra* note 33, at 79.

136. Professor Hill joined the faculty at Oral Roberts University. She is now a professor of social policy, law and women's studies at the Heller School for Social Policy and Management at Brandeis University. Anita Hill, *The Smear This Time*, N.Y. TIMES, Oct. 2, 2007, available at <http://www.nytimes.com/2007/10/02/opinion/02hill.html?hp>.

137. Data on minority representation in the professions, from the most recent U.S. census, support the inference that other professions provide better, more secure paths to entry in their respective fields. While only 9.7% of U.S. lawyers are minorities, 20.8% of accountants and auditors, 24.6% of physicians and surgeons, 16.7% of civil engineers, and 14.9% of architects are minorities. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES, 2002 (2004) (Table No. 165), cited in MILES TO GO, *supra* note 16, at 7.

138. This is not to suggest that a more comprehensive law school curriculum would make early-career mentoring completely unnecessary; nor is it to suggest that a more practically-oriented curriculum would somehow immunize young women attorneys of color from discriminatory non-mentoring or from abusive mentors. Shelly Ann Panton, a Howard University Law School alumna who praises the preparation she received there, still suffered as an associate from a lack of mentoring that drove her out of the law firm; she eventually became a recruiter for a legal temporary agency. DEAR SISTERS, DEAR DAUGHTERS, *supra* note 40, at 148–51.

139. WILLIAMS, *supra* note 34, at 89.

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express such deep, intensely-felt gratitude, that there is a religious quality to them. They sound like redemption, salvation narratives. The struggling novice attorney, undertrained by law school and unable yet to practice law, risks failure until her career is rescued and redeemed by a selfless mentor to whom she feels enormously indebted for the rest of her career.¹⁴⁰ By looking closely at these “redemption” narratives, one can learn how successful practicing attorneys acquired the skills they needed and what law schools might learn from those mentoring relationships as they consider reforming their curricula.

In *Rebels in Law*, Sadie Tanner Mossell Alexander, a 1927 graduate of the University of Pennsylvania Law School, wrote that when she joined her husband’s law firm, she was encouraged by him to seek admission to Orphan’s Court (a predecessor of modern probate court) because it was a practice that none of the men in the firm liked.¹⁴¹ She learned how to be a practitioner when a judge in Orphan’s Court volunteered to be her mentor.¹⁴² It was “a most exceptional opportunity,” a “magnanimous offer I gratefully accepted.”¹⁴³ The judge arranged for all her petitions to be referred to him, and each Friday for four months he called her to his chambers to discuss her pleadings, after which he told her he was “satisfied that you are ready to go it on your own, but don’t fail to come back if you need me.”¹⁴⁴ Sixty-one years later, after a long, successful career in law, Alexander wrote, “I hope that the character of my work in the courts has been such as fully to indicate the depth of my appreciation of Judge Thompson’s concern for me and unselfish contribution to my career as a lawyer.”¹⁴⁵

In *Dear Sisters, Dear Daughters*, Eileen Letts, co-founder of the Chicago firm Greene and Letts, tells a similar story.¹⁴⁶ While she disliked the law school experience at Chicago Kent College of Law, she found a mentor in a blind solo practitioner for whom she clerked in her summers.¹⁴⁷ She recalled:

I would go to court with him, listen to his cases and arguments, file documents, and write briefs. We would discuss his theories, and he would listen to my opinions. It was a great experience and one that has helped me throughout my career. He always treated everyone the same whether they were the courtroom personnel or the judge. I learned so much more . . . than was in a book . . . [W]e still are friends today.¹⁴⁸

140. The results of the national survey of women attorneys of color described in the A.B.A.’s 2006 *Visible Invisibility* report confirms this observation about good mentoring: “However [i.e., in contrast to those who were marginalized and excluded], women of color who worked in law firms where senior attorneys took an active interest in their careers and provided them with the tools and experiences they needed to be successful responded enthusiastically to the support they were given, and their careers blossomed as a result.” *VISIBLE INVISIBILITY*, *supra* note 14, at 21.

141. See Sadie Tanner Mossell Alexander, *Forty-five Years a Woman Lawyer*, in *REBELS IN LAW*, *supra* note 22, at 26–27.

142. *Id.* at 27.

143. *Id.*

144. *Id.*

145. *Id.*

146. See *DEAR SISTERS, DEAR DAUGHTERS*, *supra* note 40, at 154–57.

147. *Id.* at 154.

148. *Id.* at 154–55.

Civil rights attorney Marian Wright Edelman, who found her classes at Yale Law “deadly dull,” was one of the first two Earl Warren Fellows (along with Julius Chambers) at the NAACP Legal Defense and Education Fund (LDF) in the mid-1960s.¹⁴⁹ She described as “providential” the good fortune that this fellowship was created just as she was completing law school.¹⁵⁰ (Later, she described a law clerk who shared his bar-study notes and helped her become the first African-American admitted to the Bar of Mississippi, as her “secret angel.”¹⁵¹) The Earl Warren Fellowship provided her a year of “rigorous training” at LDF’s New York City headquarters followed by three years of support for her civil rights work in Mississippi.¹⁵² During that first year in NYC, she “learned more . . . in LDF’s practical school of lawyering about the real workings of the legal system than I had in the prior three years of law school.”¹⁵³ She drafted briefs for civil rights cases and worked closely with LDF staff attorneys, leading law professors and “civil rights lions of the time.” She was “adopted into a network of LDF cooperating attorneys throughout the South and country who were litigating civil rights cases in their communities with LDF technical and financial assistance.”¹⁵⁴ In addition to the “enormous amount of practical lawyering” she learned from them, including “how to survive and navigate the intricacies of Mississippi’s feudal legal system” and lawyering’s “social etiquette,” she credits them with “nurtur[ing] . . . [her] confidence for the tough battles ahead, and [becoming] a lifelong community of support and inspiration.”¹⁵⁵

Among Marian Wright Edelman’s mentors at the Legal Defense and Education Fund was Constance Baker Motley.¹⁵⁶ It is Motley’s story that is the paradigm of the “redemption” narrative. Motley came from a working-class

149. EDELMAN, *supra* note 25, at 69, 73.

150. *Id.* at 73.

151. *Id.* at 79

152. *Id.* at 73–74.

153. *Id.* at 74.

154. *Id.*

155. *Id.* at 74–75. U.S. Congresswoman Eleanor Holmes Norton’s co-authored memoir *Fire in My Soul* does not fit the “redemption” story pattern because she was pleased with her legal education at Yale, and does not describe herself as underprepared when she began practice. ELEANOR HOLMES NORTON & JOAN STEINAU LEASTER, *FIRE IN MY SOUL* (2003). She does, however, praise her early-career mentors in ways that are similar to what authors of “redemption” stories say, and her praise is instructive for those proposing to reform legal education. For instance, in her first summer after law school graduation, she worked with Joseph L. Rauh, Jr., a leading civil rights lawyer who was in charge of drafting the brief to the Democratic Party Credentials Committee, asserting that the new Mississippi Freedom Democratic Party should be considered the state’s official delegation. Holmes Norton, together with a Harvard law student, “wrote the brief ‘as if we were partners to Joe Rauh.’ . . . [W]e’d come in with what we’d done and Joe would sit and talk to us, looking at our work. That’s just how Joe treated us—though he was our mentor and teacher!” *Id.* at 122. That fall, she became a law clerk to Judge A. Leon Higginbotham, Jr., who had just been named the first black U.S. district court judge. She wrote, “It was an extraordinary apprenticeship. We’d sit down together and write. He treated me like a peer.” *Id.* at 130. The experience taught her that “[e]verybody in this world needs to be edited, and needs a sounding board.” *Id.* at 131.

156. EDELMAN, *supra* note 25, at 73.

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family of twelve children in New Haven, Connecticut.¹⁵⁷ Her only job after graduating from high school with honors was a youth-opportunity job with one of New Haven's National Youth Administration projects, sewing garments and refinishing old chairs.¹⁵⁸ Her sister tried to persuade her to take jobs as a maid; her mother told her she should be a hairdresser.¹⁵⁹

Her life changed when a local philanthropist heard her make a speech at a community center meeting; he was so impressed that he asked her what she wanted to do with her life.¹⁶⁰ When she answered, "I'd like to be a lawyer," he offered to pay for her college and legal education.¹⁶¹ In between college graduation and the start of law school at Columbia, she worked at a wartime agency to aid servicemen's dependents in Newark.¹⁶² When she told her supervisor she would be leaving soon to start classes at Columbia Law School, her supervisor told her, "That's the dumbest thing I ever heard. That's a complete waste of time."¹⁶³ Between the pressure of her benefactor's expectations for her success, her own career aspirations, and the conflicting doubts planted by people like that supervisor—not to mention the law school's dean who earlier voted against admitting women¹⁶⁴ and her own parents who discouraged her¹⁶⁵—it must have been a shock for this ambitious lawyer-to-be when she discovered law school was "an unmitigated bore, wholly theoretical, esoteric, and without practical application."¹⁶⁶

What restored her confidence in her career choice and her own potential as a lawyer was the mentoring she received when she joined the staff of the Legal Defense and Education Fund.¹⁶⁷ "The LDF job was just what I needed and wanted. It was my first inkling that I was going to do something I wanted to do with my legal education and my life."¹⁶⁸ Like Sadie Tanner Mossell Alexander, Eileen Letts, Marian Wright Edelman, and others, Motley was left undertrained and disengaged by law school. Looking back from the late-career heights of great achievement, she, like them, expressed gratitude to the post-law school mentors to whom she owed her real legal education and her career. "[H]ad it not been for [LDF Chief Counsel] Thurgood Marshall's liberal view of how women probably ought to have the same chance as men to become lawyers, I probably would not be standing here today telling you about my career."¹⁶⁹ Motley wrote:

157. Douglas Martin, *Constance Baker Motley, Civil Rights Trailblazer, Dies at 84*, N.Y. TIMES, September 29, 2005, at B10.

158. EQUAL JUSTICE UNDER LAW, *supra* note 28, at 42–43.

159. *Id.* at 41–43.

160. *Id.* at 43, 45.

161. *Id.* at 45.

162. *Id.* at 55–56.

163. *Id.* at 56.

164. Constance Baker Motley, *Some Recollections of My Career*, in REBELS IN LAW, *supra* note 22, at 41–42 [hereinafter *Some Recollections*].

165. EQUAL JUSTICE UNDER LAW, *supra* note 28, at 41.

166. *Id.* at 59.

167. *Id.*

168. *Id.*

169. *Some Recollections*, *supra* note 164, at 42.

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Having joined that staff in 1945, I was on the ground floor of the civil rights revolution as it has come to be known. Because we were a small staff and it was not very fashionable in those days to be working on civil rights, I got an opportunity that few lawyers graduating from Columbia Law School with me have had an opportunity to do and that is actually to try major cases, taking appeals to courts of appeal, and to argue in the United States Supreme Court. In those very early days our work entailed creating the legal theories on which we would have to win our cases. We became legal craftsmen in that respect.¹⁷⁰

In her autobiography, *Equal Justice Under Law*, Motley describes in more detail her post-graduate, on-the-job legal education.¹⁷¹ At first, she was given behind-the-scenes work—legal research and information-gathering—in the early stages of what would one day be the historic U.S. Supreme Court case, *Sweatt v. Painter*, a lawsuit over the University of Texas’s separate and unequal law school for blacks.¹⁷² Although only a very junior attorney, one who had never even tried a case before, she was made part of the team of LDF attorneys: she attended strategy meetings and traveled to Washington and other cities to hear LDF attorneys’ arguments in court.¹⁷³ Especially memorable for her were the weekend conferences that Thurgood Marshall organized, recruiting the top civil rights attorneys and law professors to “discuss and develop the novel and sophisticated legal issues to be confronted.”¹⁷⁴ Motley recalled: “To hear Houston, Miller, Hale, Kaplan, Robert Ming . . . and others debate and develop the new theory provided me with an amazing legal education.”¹⁷⁵

In 1949, three years after her law school graduation, “Thurgood decided that I should begin learning to try cases, so he sent me down to Baltimore to observe Charles Houston try a prototype, a [race discrimination] suit against the University of Maryland School of Nursing.”¹⁷⁶ She literally learned at his side; so close she could read every note he wrote for himself and could study how he organized his materials for courtroom presentation:

When I arrived in the Baltimore City Court for the trial, Houston allowed me to sit at the counsel table. He had each exhibit he intended to introduce marked and spread out on the table for easy citing and a loose-leaf notebook in which he had written every question he intended to ask the witnesses and his legal arguments.¹⁷⁷

When she finally argued her first case, her LDF training resulted in her “first solo legal victory.” “Thurgood accompanied me to Albany, New York,

170. *Id.* at 43.

171. *See* EQUAL JUSTICE UNDER LAW, *supra* note 28, at 61–86.

172. *See id.*

173. *See id.*

174. *Id.* at 67.

175. *Id.* at 68 (referring to Howard Law School Dean Charles Houston, civil rights lawyer Loren Miller, Columbia Law School professor Robert Hale, Harvard Law School professor Benjamin Kaplan, and University of Chicago Law School professor Robert Ming).

176. *Id.* at 70.

177. *Id.*

where I argued, before the state commissioner of education, my first case, which involved racial segregation in the public schools of Hampstead, New York, through the gerrymandering of school-district lines.”¹⁷⁸

III. A MORE DEMOCRATIC PROFESSIONAL EDUCATION: CRITERIA FOR REFORMS OF LEGAL EDUCATION

The recent Carnegie Foundation report on legal education, advocating a comprehensive integration of the teaching of legal doctrine, practical skills, and professional identity,¹⁷⁹ got it right. As did the Clinical Legal Education Association’s earlier report advocating context-based education where students learn legal problem-solving through simulations of real legal work.¹⁸⁰ So too did the 1992 MacCrate Report proposing more skills and values instruction with greater feedback from instructors.¹⁸¹ The autobiographical narratives of women attorneys of color show why they got it right, and suggest that implicit in each of these reform proposals is an argument that U.S. law schools must promote their democratic civic missions by more fully training all law students for the practice of law, making them less dependent on post-graduate apprenticeships in law firms. Whether they are stories of undertraining and disengagement from law school or of enthusiastic participation in the practice-centered education at Howard Law School in the 1930s and 1940s; whether stories of early-career disillusionment and betrayal, or of early careers auspiciously rescued by generous mentors—in their various forms, narratives of professionalization by women attorneys of color also suggest criteria for evaluating curricular reform proposals. The remainder of this article will identify the qualities of engaged legal learning that lead to successful legal careers, as described in these narratives.

A focus on improvement, with frequent regular assessment of progress, is one of the hallmarks of stories of achievement of legal skills.¹⁸² Rather than a one-time examination graded on a curve, which confirms the myth that legal ability is a fixed and inborn talent, a focus on improvement keeps learners engaged and confident about their futures as lawyers. The focus on improvement is reinforced with increasingly challenging tasks, often accompanied by more intensive

178. *Id.* at 71.

179. See SULLIVAN, *supra* note 4.

180. See STUCKEY ET AL., *supra* note 12.

181. See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *supra* note 10, at 141–48.

182. This feature of the narratives of women attorneys of color confirms—and is confirmed by—the findings of the Carnegie Report. See SULLIVAN, *supra* note 4, at 171–74ff, 189 (“[with formative assessment] feedback is provided primarily to support students’ learning and self-understanding rather than to rank or sort. Contemporary learning theory suggests that efficient application of educational effort is significantly enhanced by the use of formative assessment Formative practices directed toward improved learning ought to be primary forms of assessment.”). Similar recommendations are made in the Clinical Legal Education Association’s 2006 report *Best Practices for Legal Education*, STUCKEY ET AL., *supra* note 12, at 191–95 (recommending a focus on improvement and feedback through formative assessment). Psychological research on fixed versus growth mindsets likewise confirms the value of emphasis on improvement via frequent formative assessment. See, e.g., SELF THEORIES, *supra* note 103.

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feedback as the learner progresses.¹⁸³ Thus, Pauli Murray described how, at Howard University Law School, “exceptionally able students were rewarded for excellence by being permitted to do research on a brief under the supervision of a professor.”¹⁸⁴ Sadie Tanner Mossell Alexander described how she met with the judge in Orphan’s Court every Friday for four months to evaluate her progress drafting pleadings until he pronounced her ready to go it on her own.¹⁸⁵ And Constance Baker Motley described her closely monitored progress from doing legal research and information-gathering to trying her first case under the close supervision of Thurgood Marshall.¹⁸⁶

Another feature of the achievement stories is a nearly egalitarian relationship between the learner and mentor/teacher marked by mutual respect and mutual learning.¹⁸⁷ In contrast to the traditional Langdellian professor, Socratically questioning his terrified students like the infamous Professor Kingsfield in *The Paper Chase*, the most effective professors and mentors described in these narratives were also the ones who were most willing to let students question them and treat them as equals. Thus, 1948 Howard Law graduate Mahala Ashley Dickerson recounted how her law professors would test new legal arguments in front of their students and “allow the students to play devil’s advocate and critique their proposed arguments.”¹⁸⁸ Eileen Letts, co-founder of a Chicago law firm, reported that her early career mentor would discuss his legal theories with her and “he would listen to my opinions. It was a great experience He always treated everyone the same whether they were the courtroom personnel or the judge.”¹⁸⁹ Lawyer and U.S. congresswoman Eleanor Holmes Norton had the good fortune to have two such early-career mentors: civil rights attorney Joseph L. Rauh, Jr., who treated her as if she were a partner (“[W]e’d come in with what we’d done and Joe would sit and talk to us, looking at our work. That’s how Joe treated us—though he was our mentor and teacher!”)¹⁹⁰ and federal district Judge A. Leon Higginbotham Jr. (“[W]e’d sit down together and write. He treated me as a peer.”).¹⁹¹ She herself became that kind of mentor to others, saying: “Everybody in this world needs to be edited, and needs a sounding board.”¹⁹²

183. Social psychologists describe this as a “learning-focused environment.” London et al., *supra* note 14, at 405 n. 70.

184. MURRAY, *supra* note 24, at 182.

185. See Alexander in REBELS IN LAW, *supra* note 22, at 26–27.

186. See EQUAL JUSTICE UNDER LAW, *supra* note 28, at 61–86.

187. The recent literature on legal education reform reaches similar conclusions. See, e.g., STUCKEY ET AL., *supra* note 12, at 84–85 (“Foster Mutual Respect Among Students and Teachers”); *id.* at 83–84 (“Support Student Autonomy”); SULLIVAN ET AL., *supra* note 4, at 146–47, 177–78, 180; see also GUINIER, *supra* note 19, at 95 (describing ideal mentor/teacher-student relationship as “interdependent” and “coproductive”). See also SARA LAWRENCE-LIGHTFOOT, RESPECT 153–94 (2000) (describing the interplay of self-respect and respect for students in the teaching style of Harvard Law School Professor David Wilkins).

188. Mahala Ashley Dickerson, *Jet-Propelled into the Law*, in REBELS IN LAW, *supra* note 22, at 30.

189. DEAR SISTERS, DEAR DAUGHTERS, *supra* note 40, at 155.

190. LESTER ET AL., *supra* note 32, at 122.

191. *Id.* at 130.

192. *Id.* at 131.

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Successful legal learning also happens when students collaborate with each other and with teachers—when, in other words, there is teamwork.¹⁹³ Pauli Murray and Richard Kluger both describe the camaraderie and group effort at Howard Law School, where students and faculty worked together on civil rights cases.¹⁹⁴ Marian Wright Edelman explains how she learned to be a lawyer and developed the confidence she needed by being “adopted” into, and working closely with, a community of Legal Defense Fund attorneys.¹⁹⁵ Closely linked with collaboration and teamwork is yet another feature of the success narratives: the student and teacher/mentor’s sharing of a common purpose or goal.¹⁹⁶ Often, in these narratives, it is the legal battle for civil rights that serves as the common purpose, but the common purpose can simply be a shared goal of providing the highest quality legal representation, as was the case for Sadie Tanner Mossell Alexander and her mentor-judge in Orphan’s Court.¹⁹⁷

Two final qualities of successful legal learning gleaned from these narratives may pose the greatest challenge for Langdellian-style law schools: an emphasis on legal creativity¹⁹⁸ and small learning groups. Graduates of Howard Law School in the 30’s and 40s and young lawyers working for the Legal Defense Fund, like Motley and Edelman, repeatedly recall the intense engagement and learning that accompanied being required to create new legal theories as they became creative legal craftsmen. In the absence of projects demanding legal creativity—as the narratives of law firm experiences by Anita Hill and others make clear when they describe being given only routine legal assignments—learning slows, and the learner disengages.

193. Lani Guinier, in the final chapter of *Becoming Gentlemen*, titled “Models and Mentors,” makes a similar recommendation for an “interdependent” or “coproductive” relationship between mentor and student. GUINIER ET AL., *supra* note 20, at 85–97. Collaborative learning, development of legal imagination, and the integration of evaluation into the learning process are features of the ideal “re-imagined law school.” Sturm & Guinier, *supra* note 105. Collaborative legal learning is among the themes of Goldstein and Katyal. GOLDSTEIN, *supra* note 94; Katyal, *supra* note 94. See also Blackwell et al., *supra* note 41; Cimpian et al., *supra* note 41; *Is Math a Gift?*, *supra* note 41; Mangels et al., *supra* note 41; *Studying Institutional Engagement*, *supra* note 41; *Psychological Theories of Educational Engagement*, *supra* note 41.

Social psychologist Bonita London concludes from her research on law students that collaborative learning is a way to foster engagement. See *Psychological Theories of Educational Engagement*, *supra* note 41, at 480–81. See also SULLIVAN ET AL., *supra* note 4, at 119–20, 179–80 (discussing the value of collaborative learning and teamwork, including collaboration between teacher and students); STUCKEY ET AL., *supra* note 12, at 88–89.

194. See MURRAY, *supra* note 24, at 182; KLUGER, *supra* note 97, at 129.

195. EDELMAN, *supra* note 25, at 74.

196. The recent Carnegie Report advocates a version of this feature of the success narratives, which it calls “intentional learning,” using a term borrowed from cognitive researchers, and “institutional intentionality.” See SULLIVAN ET AL., *supra* note 4, at 179–81.

197. See Alexander in REBELS IN LAW, *supra* note 22, at 26–27.

198. Recent scholarship by legal-education reformers recommends finding ways to develop students’ legal imagination. See Sturm & Guinier, *supra* note 105, at 544. See also Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597 (2007); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 HARV. NEGOTIATION L. REV. 97 (2001).

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Smaller class sizes would seem to be the necessary foundation for all curricular reforms judged by these criteria.¹⁹⁹ In classrooms with hundreds of students so overpacked that the only feasible means of assessment was a final true/false exam, Glendora McIlwain Putnam recalled that she and her classmates were forced to teach themselves to be lawyers.²⁰⁰ Conversely, smaller class size, even if it meant fewer tuition dollars or stretching a law school's budget more thinly, was how Howard Law School Dean and NAACP Litigation Director Charles Houston believed one best trained young minds.²⁰¹

CONCLUSION

Narratives of professionalization by women attorneys of color demonstrate how undertraining in law school, whether through an overly theoretical and doctrinal formal curriculum or through the self-undertraining produced by disengagement, can cripple careers that depend on law firm apprenticeships for basic legal training. Proposals to reform legal education need to be clearer about the stakes. If law schools want to live up to their democratic missions, they must provide comprehensive professional training. Furthermore, they must do so in ways that foster learning for everyone: by assessing students in ways that focus on improvement; rewarding success with new challenges; demanding creative thinking; and structuring schools so that learners and teachers, in small groups, working in egalitarian collaboration, progress together towards shared goals.

199. The recent Carnegie Report both acknowledges the necessity of small classes for the reforms it advocates, and acknowledges its financial burden. See SULLIVAN ET AL., *supra* note 4, at 198 ("Courses and other experiences that develop the practical skills of lawyering are most effective in small-group settings. Of all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome."). See also GUINIER ET AL., *supra* note 19, at 74 ("[W]e recognize that small class size may be a necessary precondition to learning for some law students.").

200. See Glendora McIlwain Putnam, *Sheer Determination Brought Me Through*, in REBELS IN LAW, *supra* note 22, at 32.

201. KLUGER, *supra* note 97.