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Grey Matters

*Lois Schwartz**

At the age of thirty-nine I spotted my first grey hair. "It's a sign!" I exclaimed. "You don't believe in signs," my then-husband responded. "Well, then, it's a nudge." "Well, I'll admit that you're on firmer ground there," he said. I was convinced that I needed to make a change before it was too late. At that point, I did not realize that change always brings its silent partner, disruption. Both were about to strike.

I enrolled in an LSAT preparation course. I kind of wandered into it. I didn't have any great desire to study law, but I didn't have any particular objections either. My graduate degree in English gave new meaning to the term "dead end." I can say with confidence that a concentration in Marxist literary criticism does not open doors. Law school would at least provide some marketable skills. After the LSAT, the next step was completing the applications to law school. Then I had to convince myself to actually attend.

It's not easy to make this kind of decision when you have a family with a busy husband who works long hours and two small children who expect their parents to raise them. But in 1986 I could not see any economic disincentive to attending law school, since University of California tuition was dirt cheap in those days and so—for better and worse—was child care. I bit the bullet and sent in my enrollment deposit. In fact, this dramatic change in my life was quite convenient. We lived in Berkeley and attending Boalt Hall meant that I had a commute of less than fifteen minutes. Couple that with easy parking, thanks to a parking permit that I wasn't supposed to have, and it was one of those offers you can't refuse.

A large benefit of legal education, at least for older students, is this: if you put one foot in front of the other and keep your nose clean, you end up with a J.D. at the end of three years. Three years is a very short period of time from the perspective of someone who is no longer twenty-five and, in fact, is no longer thirty-five either. Of course, that lineal formula assumes

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no roadblocks or derailments created by family obligations, but it was not far from the mark. All I had to do was keep my head down, study, and keep the home fires burning at the same time.

I liked a lot of things about being in law school. It was nice to regress, to walk around with a backpack, to not go to work, and to let someone else worry about whether the next two hours of classroom time would be a success or a failure. At the beginning, anyway, I had instant status: people often mistook me for a professor even though I hadn't said anything pedantic. Furthermore, law school was orderly and predictable. In most classes, you had a schedule and a syllabus. You planned your time and the work got done. This was a distinct contrast to childrearing, which is an uninterrupted series of surprises up to and including the date of your offspring's wedding. It was also a welcome contrast to my prior experience in graduate school, where the professors in the English Department, every one a master of improvisation, did not hesitate to conclude a Thursday seminar with a cheery announcement, "Read *Nicholas Nickleby* for next Tuesday. Yes, both volumes. Sorry I forgot to mention this earlier. Have a good weekend. It's supposed to be beautiful out."

My family was cooperative. Perhaps they sensed my determination to make this work or, more likely, they were just unaware that law school was about to cheat them out of hours and days and weeks of time with me. When I started law school, my younger son thought it was cool that he and Mommy "were both in first grade." My older son seemed pleased—or at least not displeased—that I would be there when he got home from school. No one got ear infections or broke any limbs. At times, to be sure, the attraction of yet another "fun with daddy" outing grew a little stale for all concerned, but this plan allowed me to repair to the law library, and we coped. To add to the mix, my husband and I were part of the sandwich generation, so we also had aging parents who required care. They seemed instinctively to time their health problems to coincide with semester breaks.

In 1986, the 1L law school class had some other "returning" students, a term intended to camouflage the fact that we were old. I was forty, which seems young to me now, but in the law school setting, in those days at least, it hovered close to death. In my class, only one other student was older than me, and he divided his time between classes and trying to manage his business in absentia from a tiny phone booth in the basement of the building. The "returning" students found each other and we forged our own small social network—although the phrase was nonexistent at the time. The six of us, huddled together against the storm, formed the geriatric study group.

And, in fact, it worked. We studied together throughout the first year, and continued to do so until we graduated. We weren't activist gray panthers or anything interesting like that, but we recognized the benefits of making law school a collective enterprise. Despite our very different

backgrounds, we were all tired, beset with competing obligations, and concerned about being sharp enough to recharge our brains for the task at hand. While not entirely devoid of pathology (I could tell stories), the geriatric study group became a safe haven. I once saw a mock-motivational poster spoofing office meetings. It read, "None of us is as dumb as all of us." But we were contrarians, because the geriatric study group experience taught us that none of us was as smart as all of us.

Without question, attending law school in my forties gave me the benefit of the long view. The other members of the study group were also pretty good at keeping things in perspective and dealing with the downside. After a round of particularly mean-spirited Socratic questioning in class, we'd try to blow it off with comments like "I used to have a boss like that" or "I used to be a boss like that." If a reading assignment was indecipherable and the course lecture compounded the confusion, we worried less than our younger counterparts. Our relatively lengthy tenure on the face of the earth had blessed us with the virtue of patience and the confidence that eventually, somehow, the law would all shimmer into focus. If it didn't happen right away, we could wait.

This is not to say that it was always possible to remain insulated in the age bubble. In the classroom, particularly, some of the traditions associated with legal education tended to have a toxic effect, and no degree of experience could shield you. Professors who reveled in putting people on the spot, asking pinpoint questions, and engaging in mystery quests and Kingsfield-style jibes—all of those classroom shenanigans probably worked well enough at one time in the grand tradition of legal education. By now, however, the hazing had gone stale. In fact, it had become offensive.

Try as I might, I simply could not figure out why the law school admissions office would go to such enormous efforts to assemble a class of highly accomplished students, only to subject them to a learning atmosphere guaranteed to lay siege to the qualities that had made us desirable candidates. No one expected law school to be a barrel of fun. We knew it would be difficult. Still, why was the classroom so hostile, and what was the point of making so many students unhappy? If this was a rite of passage, it seemed irrelevant and ridiculous to many of us. Furthermore, teaching by intimidation could not have benefited the institution in the long run, since alums are supposed to have pleasant memories that encourage donations, are they not?

I mentioned this phenomenon to my study buddy Suzanne Homer, and she concurred. We started to ask other people if they felt isolated or alienated in the classroom. It surprised us that so many students seemed to blame their negative feelings on their own perceived inadequacies and didn't seem to recognize that the marginalization might be institutional in nature.

So we decided to do what any other law student with an overload of competing obligations and no free time would do—we took it on. We wanted to survey the students about their experience in law school, in the hope that our findings would encourage some change. And we wanted to do a real survey, not something ad hoc. Neither Sue nor I had experience in handling empirical data, but the UC Berkeley Survey Research Center was just a few blocks away from the law school, and we were not shy. We found two people there who were interested in the project. They helped us create a questionnaire that would produce credible results.¹ In the end we narrowed our survey instrument down to sixty questions that combined multiple choice ratings and open-ended inquiries. It sounds so simple, but it took weeks to design a workable questionnaire, even with the generous input of the folks at the Survey Research Center.

We did manage to wrangle some funding for the project from the UC Berkeley Graduate Student Assembly. We gave them some vague information about what we were up to and they gave us some money. Life was simpler then. Later the law school itself supplemented with some indirect funding. I doubt that they had any idea what we were doing but I am certain they realized that helping us would make us go away, at least in the short run. This support enabled us to make enough copies of the questionnaire for a complete distribution and, eventually, to hire a *wunderkind* in the statistics department to process the findings. I think he lived for the data contained in those continuous form printouts with perforated edges that tractor-feed printers cranked out at tortoise pace in those days.

Our statistician's enthusiasm was a good thing, because we had an unexpected seventy-eight percent return rate on the survey. Boalt Hall had about 900 students at the time. We had never anticipated that level of response. Despite—or perhaps because of—the classroom atmosphere that drove most students to silence, our fellow student respondents jumped at the chance to say what was on their minds with no fear of Socratic retribution. It put me in mind of a study I had read in college in which the authors were engaged in assessing the psychological and social experience of assembly line workers in an automobile plant.² They found that merely asking the workers about themselves tended to raise the workers' spirits, mitigate depression, and—you guessed it—distort the data in the process. I don't think anyone would say that our survey perked people up, but at times it seemed as if our best work was simply giving our fellow law students the chance to say what they thought about their experience in law school. It was not unusual for people to say thanks for asking after completing their responses.

1. Interestingly, although some readers would later challenge our conclusions, no one attacked the survey instrument itself.

2. CHARLES R. WALKER & ROBERT H. GUEST, *THE MAN ON THE ASSEMBLY LINE* (1952).

Our analysis divided respondents into groups of people of color and white students, and further divided each group by gender. We found significant differences in the law school experience of members of the different groups. Women and people of color experienced similar feelings of alienation, marginalization, and loss of self-esteem. It was important to document these differences, of course, but the results were disheartening, and we could only hope that they would lead to institutional change.³

In 1990, the year after we graduated, Sue Homer and I published an article analyzing the results of our study from empirical and theoretical perspectives.⁴ At this writing, it has been analyzed and/or cited in over 100 articles, which gives me great pleasure. There's nothing wrong with a little footnote fame. On a more substantial note—although institutional change is eternally a work in progress—I do think that our study contributed in some small way to the improvements in legal education that now benefit my own students.

After writing an article that was so critical of legal education, the last thing I expected was to remain in law school for the rest of my career. But I did, and it came about in an odd way. Right after graduation, I was practicing at a firm in Contra Costa County. One day, late in the afternoon, the 1989 earthquake hit. It took me forever to get back home to my family in Berkeley, and in my mind that was unacceptable. Apparently I did believe in signs after all. So I dropped back to part-time status at the firm and accepted a part-time administrative job at Boalt. That eventually led to full-time teaching. It didn't happen overnight, but it did happen.

In light of our study and my subsequent experience over the past twenty-five years, I think some aspects of legal education have changed for the better but I must also conclude that others have not. Women now make up over half the student enrollment at many law schools, and the faculty in some schools can be as much as one-third female. But students and faculty of color continue to be underrepresented, and that is an ongoing worry.

As for positive changes in the classroom, law professors seem to be quite conscious of the need to abandon the old teaching models and they are experimenting with methods to make learning meaningful for all law students. Changes in curriculum and allocation of assets now provide greater opportunities for practical training in addition to doctrinal instruction, a development too long deferred. It also seems to me that students are less passive about their legal educations. Thanks to increases

3. A conference conducted on March 6, 2006, by the *Harvard Journal of Law and Gender* was optimistic. The symposium, "Results: Legal Education, Institutional Change, and a Decade of Gender Studies," indicated that there have been decisive improvements in legal education and the profession over the past ten years, although there was still much work to be done. For an excerpt of that symposium, see Edward Rubin, W.H. Knight & Katherine Bartlett, *A Conversation Among Deans*, 29 HARV. J.L. & GENDER 465 (2006).

4. Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-90).

in tuition, many students have become well-informed consumers who are prepared to demand accountability.

But other internal problems persist. Most notably, the code of silence in the classroom remains. I admit that I am not a fan of coercing law students to speak in class. I think many of us engage in a more introverted learning style in which the anxiety associated with class participation distracts rather than enhances the process. But there is a world of difference between being silent and feeling silenced. And that dilemma is still with us.

I am reconciled to the fact that a law school classroom will never be like a scene from *Stand and Deliver*, with students jumping out of their seats to respond to the teacher's questions.⁵ Although there are usually hands in the air when I ask the class for a response to a question, the more frequent phenomenon is what I call the "law school mumble." It is collective in nature and reflects the internal bargain between the desire to respond and the wariness of the emotional consequences if one hazards a solo answer and misses the mark. I totally get that, and I am fine with it. But I am much more concerned when a student's reluctance to participate is not a choice but instead stems from a deeper negative source such as marginalization, alienation, dissatisfaction, or lack of self-esteem. Even after all these years, we have not made great progress in eliminating such problems.

Of course, law school is not the only place where changes have occurred. There is life outside the academy. My small children have evolved (who can resist a little shout-out?) into splendid adults: two smart, independent, funny, and very cool guys with lovely families and careers of their own. They have forgiven me (or at least are considering forgiving me; these things take time) for the three years when I ran away to law school without leaving home. My then-husband is now an ex-husband, but has remained a good guy throughout. He considers my legal education to be one of the best investments of community property ever made, ineligible for reimbursement at dissolution notwithstanding.

As for me, there has been a substantial increase in those grey hairs that resonated with symbolism when I turned thirty-nine. At that time, it seemed like such a risk to go to law school. Now, hindsight tells me the real risk would have been doing nothing. Any regrets? None so far.

5. *STAND AND DELIVER* (Warner Bros. Pictures 1988).