Are Women at a Disadvantage?

In the Spring 1987 issue of The Law School Record we published a letter from Elizabeth Gorman Nehls '85 on the position of women in law school. We invited you to respond. Letters have been edited solely because of space constraints.

To the Editor:

I am intrigued by Elizabeth Gorman Nehls's perceptions that women students at the Law School, "as a group, have not achieved the academic and professional success that might be expected, given their numbers," and by her various explanations, including that "women continue to experience discrimination against them, only in more subtle forms...."

Initially, one might ask what measure of academic and professional success might be expected of the Law School's female students. Women at the Law School have served on the Order of the Coif. Female graduates have held judicial clerkships at all levels, including the United States Supreme Court; have been appointed to powerful government positions, such as federal prosecutor; and have been elected to partnerships at some of the nation's most powerful and prestigious law firms, to name but a few accomplishments. This is an impressive track record, indeed.

A second, more compelling question is what numbers have to do with any of this. I, for one, find nothing more sexist or racist than the assumption that all positions in society should be filled in accordance with percentages determined by sex or race. This is not to suggest that one should expect any particular sex-based or race-based makeup in society, but only that sex and race should be immaterial. From my perspective, we will be a less sexist, less racist society when we stop perceiving and categorizing people based on sex and race....

Ms. Nehls's sex-based introspection on the reasons other than discrimination (invidious, we presume, no matter how subtle) that may account for perceived disparities in the success rates of male and female students seems only to trade on outmoded stereotypes and perpetuate unfortunate myths....

If, for example, women are "typically raised to accept an ethic of selflessness, of positive duties and responsibilities to others, and of giving first priority to the sustenance of interpersonal relationships," as Ms. Nehls claims, we might presume that men are raised to accept the opposite. If not, then Ms. Nehls's observation about women is meaningless; but if so, then men's ingrained "ethic of selfishness" would seem to deprive them of important personal resources: the senses of duty and responsibility essential for assuming leadership roles in society, and the interpersonal skills and relationships necessary for successful group interaction and for coping with the anxieties of decision making....

Similarly, to the extent that a perceived linkage between femininity and passivity implies a linkage between masculinity and aggression, that very aggression could be a reason why men should not succeed. Clients, coworkers, supervisors, and constituents frequently do not respond well to aggressive, self-centered behavior.... Once again, the peculiarities of the male makeup (if such exist) offer as many reasons for failure as for success.

Finally, if Ms. Nehls's analysis implies that men succeed in disproportionate numbers because they expect to succeed, then it ignores a vast body of empirical and anecdotal evidence. The evidence is that many men do not succeed in life, regardless of their expectations. Ms. Nehls's analysis also ignores the corresponding pressure brought to bear, both by themselves and by others, on those who are expected to succeed. As standards become set impossibly high, failure to achieve them becomes inevitable....

The fear of possible failure and anxiety caused by unrealistically high standards can in and of themselves deter success.

In sum, Ms. Nehls's explanations for a purported problem seem flawed by very fundamental sexist notions about both men and women. Such
thinking is likely to perpetuate sexual stereotypes, not reduce or eliminate them. As for me, I simply don’t perceive the problem. I see nothing for which women students or graduates of the Law School have to apologize. Women, like men, should simply ask themselves if they are satisfied with what they have accomplished as individuals.

Very truly yours,

David L. Applegate ’78
Karon Morrison & Savikas, Ltd.
Chicago

To the Editor:

Ms. Nehls implicitly offers a vision of a brave new world, which I find unsatisfactory—a world in which women, in order to share in the bounties that the men before them have labeled success, have cast aside the special qualities that they now (according to Ms. Nehls) hold in such abundance.

I refer in particular to the “ethic of selflessness”—a quality lamented by Ms. Nehls but in which I would find cause for pride and joy. I must say, I have my doubts that women in law school are as selfless as Ms. Nehls suggests. My experience was that one had to look long and hard for a friend, woman or man, who would make the kinds of sacrifices that Ms. Nehls describes as “self-defeating choices.” But if it is true that more women than men possess this quality, then we women must never be found wringing our hands and looking to men to show us a better way. We should proselytize rather than apologize and strive to ensure that men learn to sacrifice right along with us. And we should do so not only to lift some of the burdens now placed on us—burdens that result when only one group is expected to make the kinds of personal sacrifices Ms. Nehls describes—but also in order to show that there is a better, a more complete way to live a life.

[Ms. Nehls] offers a view of success that I do not man. The choices that she labels “self-defeating” are all decisions in favor of personal relationships and against conventional professional success, and she includes within the category of women who have abandoned the struggle for success those who choose to “do good” through charitable or political activities.” If success is measured only in terms of one’s GPA, fancy extracurriculars, and financial net worth, then it will not behoove ambitious women to make sacrifices for the sake of others. But if success is conceived more expansively, then a failure to be unselfish might be a failure to be successful.

It may not have crossed [Ms. Nehls’s] mind to ask the antecedent question of what it is that we mean by “success.” In failing to ask this question, however, one minimizes the contribution that women can make to society; one begins the debate by assuming that the only progress to be made is to place more women in certain positions. But if after all is said and done...we bring with us to the courtrooms and the boardrooms and the Oval Office only the bare fact of our gender, then I will sadly conclude that we have achieved little in comparison to what we might have done. Yet if we bring with us not only our gender but at least some of the qualities that we have been taught to cherish and maintain—a judicious selflessness and measured self-sacrifice—then we will have made an important change indeed. Ms. Nehls describes a coup d’etat; I envision a revolution....

I agree with Ms. Nehls that women often react passively and often expect to fail; and I think that these tendencies may promote an excess of what passes as generosity but is rather labeled insecurity. An insecure person will make unnecessary and pointless sacrifices; she will, perhaps, rush to the aid of a friend who is really not in distress.... So I think that women must be confident in order not to sacrifice themselves into oblivion. A first step toward gaining that confidence would be to announce that our “special handicaps not applicable to men” (as Ms. Nehls describes them) are, in fact, no such thing.

All of this is not to say that I am not gleeful when I see a woman score a top grade on an exam or land a particu-
larily (and conventionally) attractive job; I am. The world I have sketched should not be pictured as a place where some people are thought successful because they get good grades or write persuasive briefs, and some because they have good friends. On the contrary, it is a world in which such specialization has no place. Yet I do not think that shouldering greater personal responsibility necessarily means that everyone must endure a corresponding decrease in professional accomplishment. In fact, one of the attitudes that women can help finally to detonate is the tired notion that personal fulfillment and professional achievement are mutually incompatible. I sense that this notion is partly responsible for Ms. Nehls’s criticism of the ethic of selflessness. . . . I am optimistic enough to believe that happiness promotes productivity, and I urge that in trying to become good lawyers, women not discard some of the qualities that would make them good people.

Sincerely,

Lisa Heinzerling ’87
Chambers of Judge Richard A. Posner
U.S. Court of Appeals, 7th Circuit
Chicago

To the Editor:

To Liz’s generally cogent and insightful analysis I would add that it can be misleading to think of women as a homogeneous group. Racial and class differences remain important; the expectations and experiences of white, middle class women are not universal. For example, to generalize, black women lawyers seem to have fewer issues of passivity and dependence and guilt about working. Unlike their white counterparts, black women of course have always worked outside their homes, as racism did not and does not permit us the luxury of dependence on our men. On the other hand, expectations of failure by minority women themselves and their white evaluators are greatly increased and complicated by racism.

These differences must be taken into account in designing any program to meet the needs of all women students and lawyers. Not only must the special handicaps of traditional femininity be recognized, but the greater burdens of race and class must be addressed for minority women.

Sincerely,

Colette Holt ’85
Sidley & Austin
Chicago

To the Editor:

While I would agree with Liz that women law students could benefit from assertiveness training and career counseling I was disturbed by her ready acceptance of male values and male conceptions of success as the measuring stick by which to judge women’s achievements.

In her letter Liz identifies three ideas or values which hold women back and suggests they are handicaps women should work to overcome. One of the values which she identifies is the Ethic of Selflessness, the concept of helping others first and focusing on oneself only after those obligations have been fulfilled. . . . Liz blames this ethic for pushing women toward charitable and political activities and thus “opt[ing] for low career aspirations in terms of what is generally conceived of as success.” But this statement reveals the true problem. What is “generally conceived of as success” is a male conception of success. And if the standards are based on male behavior, which is then passed off as human behavior, women will naturally measure up poorly.

It turns out that Lawrence Kohlberg’s well-known theory of moral development with its hierarchy of six stages was based on a study of eighty-four boys. From this group of boys he generalized to a universal theory. . . . But since the model was based on male development, it is no wonder that women consistently rank low on his scale. Likewise, if the legal profession persists in measuring success by male standards, of course it will look like women are failing. One could read Liz’s suggestion of special programs and counseling for women students as a scheme to mold women law students into imitation male law students so that they can better strive for male-defined success. I think that is a mistake, . . . Rather than changing women, a better solution would be for the legal profession to recognize and embrace women’s values and thereby redefine success.

Male law professors are in an ideal position to encourage these changes in the profession. They can start by recognizing that the profession, and the law itself, has been a profession of men—created by them and infused with their values. . . . The lack of recognition and support women law students receive for their ideas in class goes a long way toward explaining their hesitance to speak up.

Increasing the number of women on the faculty would be a very simple way to broaden the range of ideas available to faculty and students while giving those ideas recognition. The school has always said it would hire more women if it could find some who met its high standards. But this brings us back to the definition of success. Women are perceived as unqualified or unsuccessful because they do not meet the male standards. If the yardstick is based on a male model of professional qualifications, then of course women may not measure up. Only by using standards that recognize women’s experiences, ideas, and values can the measuring stick be truly equitable.

Sincerely,

Eve Jacobs-Carnahan ’86
Bingham Dana & Gould
Boston

To the Editor:

Although I attended the University of Chicago Law School almost twenty years before [Ms. Nehls] did and although my life has been different from that of most women graduates of the law school, I found much in her article that struck a responsive chord
in me.

I did not enjoy law school. Perhaps that was due, as Ms. Nehls suggests it might have been, to being one of eleven women in a class of 148 when we matriculated in 1965 and one of ten.
in a class of 125 when we graduated in 1968. Perhaps it was due to being in school during the turbulent 1960's. Perhaps it was due to being a Chicagoan who had attended public schools and a Midwestern college, both facts that placed me outside the realm of the Ivy League-Seven Sisters clique obviously prevalent at the Law School. . . .

No woman chose to attend any law school in the 1960s because her family wanted her to or because she did not know what to do with herself. We were all conscious of being "different," of being pioneers whether we wanted to be or not. The U. of C. was, as far as women per se were concerned, probably the best place for a woman law student in the 1960s. Congresswoman Pat Schroeder says that when she sat down in her assigned chair at Harvard Law School in the early 60s, the men students on either side got up, announced they'd never attended school with a woman before and never would, and obtained new seats. That never happened at Chicago, I'm sure. The faculty, without exception, exhibited no bias I ever detected. The men students, with one exception, rarely exhibited animosity. The general atmosphere, however, could often be as cold as the Green Lounge on a January morning. Perhaps what women—and others who find themselves in ambiguous situations—needed and still need is a supportive, friendly atmosphere in which cooperation in the group learning experience is more important than competition within the group. It will be a long time, however, before one finds that in any American law school.

Sincerely,

Ann Louise '68
Professor of Law
John Marshall Law School
Chicago

To the Editor:

Undoubtedly, some of what Ms. Nehls says is true. On the whole, however, I think her letter misses the point.

In my experience at the Law School, women students performed as capably, if not more so, than their male colleagues. In my class (of 1978), for example, women made up approximately 23 percent of the class but 36 percent of the members of the Law Review and 37 percent of its editors. Similar experiences have been noted by my college classmates who attended other well-known law schools; on the whole, female law students perform as well, if not better, than their male counterparts.

There are real difficulties, however, that some women encounter in practicing law at large law firms. These are not the result of an "ethic of selflessness" or a "linkage of passivity"; on the contrary, female lawyers I have worked with in my law firm are every bit as capable as their male counterparts. Rather, the difficulty is one that has been encountered by women in many fields today. It seems to me that it is difficult, if not impossible, to combine the practice of law in a large law firm environment with motherhood and the responsibilities of raising a family. Men, too, often have family responsibilities but inevitably in our culture they do not seem to be as heavy a burden and are not incompatible with large law firm practice. It is in this area that women face severe problems that may, in many cases, handicap their ability to obtain the highest professional achievement and not in any "expectation of failure" that they have.

Sincerely,

David W. Pollak '78
Morgan Lewis & Bockius
New York