

Danielle Hirsch
Recognizing Race in Women's Programming:
A Critique of a Women's Law Society

The Myra Bradwell Association for Women Law Students (“WLS”) is the organization at the University of Illinois College of Law that focuses on the concerns of women, both in the College of Law and in the profession at large. WLS attempts to inform and educate students on issues that affect women in the law as well as law students in general. Given that inclusive mandate, one would expect WLS to have an active and diverse membership. Interestingly, for at least the past two years, most active members of WLS have been white, middle-class women.

The purpose of my project was to explain why women of color do not participate as actively as white women in the Women's Law Society. Trends of women's participation in WLS reflect the significance of racial experience in shaping women's identities. By examining the racial awareness of 28 women at the College of Law and also three recent major WLS events, it is clear that issues of racial complexity in shaping sexual identity are excluded from discussion. Ignoring race in WLS programs has resulted in a lack of involvement in the organization by women of color.

Given that WLS excluded discussions about race at panels and lectures addressing “women” as a whole, those programmatic choices reinforced the notion that women of WLS are white, middle-class women. Because of the transparency of whiteness as a race, white women on the executive board systemically neglect to consider the relevance of race in shaping one's identity or affecting one's experiences with sexual oppression. Programming that does not include women of color's experiences results in an alienation of women of color to attend future events. As a result, the pattern of neglecting racial identity becomes systemic.

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Including women of all races as active participants in law school programming is enriching. Regrettably, law schools and their organizations often fail to consciously include, or evaluate whether they are including, various and complex perspectives when developing programming for women. The Myra Bradwell Association for Women Law Students (“WLS”) is the organization at the University of Illinois College of Law that focuses on the concerns of women, both in the College of Law and in the profession at large.² WLS attempts to inform and educate students on issues that affect women in the law as well as law students in general. Given that inclusive mandate, one would expect WLS to have an active and diverse membership³. Interestingly, for at least the past two years, most active members of WLS have been white, middle-class women.⁴ All of WLS programming and activities are open to all members of the

¹University of Illinois College of Law, Class of 2004; Executive Board Member of Women's Law Society 2002-2003. I would like to thank Professor Daria Roithmayr for her thoughtful guidance, suggestions, and support that helped give the project shape and direction. Also, I wish to thank my parents and friends for their valuable insight and tolerance in putting up with me rambling about issues of gender and racial identity for months.

²The full mission statement of the organization reads, “[t]he Myra Bradwell Association for Women Law Students (WLS) seeks to advance women in the legal profession through education, advocacy, and outreach; to promote women's professional and legal development; to promote feminism as a theory of political, economic, and social equality of the sexes and as an organized activity on behalf of women's rights and interests. To these ends, WLS sponsors both educational programs and social activities. All women law students are members of WLS.”

³The WLS charter notes that all women law students are members of WLS; but for the purposes of this Article, the meaning of “membership” will be confined to active participation in the organization. This nuanced meaning of “membership” is significant to delineate between those women who are “members” in name only and those who are committed attendees of WLS programming.

⁴It is important to note that in 1997, WLS addressed the issue of diversity in the law school. On September 16, 1997, WLS hosted a panel discussion regarding diversity in the law school. The following remarks are taken from the WLS Fall 1997 Newsletter minutes about the meeting:

It was clear that there are still some unresolved issues with regards to the treatment of women of color at the law school. One common theme was the disregard of women of color by student organizations. Women of color discussed a feeling of isolation from other law students, even other women. The other issue causing much discussion at the meeting was the lack of a forum to discuss this subject, as well as other controversial topics. While the school sponsored a Diversity Forum last year, it appeared that it was

law school community and yet, only white women have become involved. “Concerns of women” should not insinuate only the concerns of white women.

Why do we see such a racially segregated membership? I will argue that women of color⁵ are disproportionately underrepresented in WLS because the agenda does not recognize the different experiences faced by women of color in panels and meetings. Attempts to generalize all women’s experiences as being the same because of shared gender underplay, and may even discredit, the experiences of minority women. Because WLS does not account for difference factors and configurations of racial and sexual identity, consequently, women of color turn to their racial, ethnic, or religious student groups for support.⁶ This article uses interviews⁷ with 28 second-year law students at the University of Illinois College of Law to address issues relating to the WLS, race and gender. Women of color typically expressed the importance of their race in how they were perceived at the law school. In contrast, most white women felt their race did not affect their law school identifies because they were in the majority in the law school. This disparity explains the exclusion of race in WLS programs. If white women are not conscious of their whiteness and white women organize WLS programs, it logically follows that

not well attended. This appears typical of the lack of interest often displayed regarding controversial issues. Professors commented on the difficulty of discussing controversial issues in class – either no one speaks up at all, or the tempers and attitudes of a few students dominate and intimidate the other students.

That year, the WLS executive board was also very racially diverse: out of a board of eight, four were women of color. Since the 1997-1998 WLS Board, however, issues of race within WLS have been largely ignored. Regrettably, aside from the 1997-1998 WLS Board, there has been little documentation about WLS programming or membership to draw from to determine the racial make-up of the executive board or the general membership.

⁵ I have real reservations about using the term “women of color.” See *infra* note 52.

⁶ Ironically, according to 1998 WLS recruiting literature, WLS espouses to actively engage in collaboration with other student groups. “We have a strong commitment to support, interact, and cooperate with other student organizations in the College of Law. The more groups work together, the bigger the goals we can accomplish.” However, for the past few years, there have been very few meaningful cross-sponsored events, programs, or dialogues addressing women’s issues with other racial or ethnic student groups.

⁷ See *infra* Part II B 1.

they will not to include meaningful opportunities to talk about women's experiences, including those experiences of women of color.

This article analyzes the racial dynamic of WLS via the critique of feminist essentialism defined by Angela Harris. In her article "Race and Essentialism in Feminist Legal Theory," Harris argues that by promoting the notion that all women share common experiences because of their sex, feminism negates the influence of race in shaping women's identities and experiences. Building on Harris' conclusion, there is a danger is essentializing women's experiences. I will make three central arguments.

First, race inherently shapes one's identity and experiences as a law student, separate and apart from sex or age. For women of color at the University of Illinois, race is not merely *another* form of oppression that happens to women of color, but is a part of the experience of *all* women.⁸ To force women to discuss only their sexual identity in order to belong to WLS is problematic, because experiences of women of color are the product of both racism and sexism. These experiences are not addressed in WLS programs, which force women of color who want to belong to WLS to segment their identities to neglect how race coupled with gender shape their identities as females.

Second, the article suggests that WLS treats women as a single oppressed group and fails to acknowledge the complexity of the sexual identity of all women and the prevalence of racism in our society and culture, all of which inevitably structures relationships between white women

⁸ Race cannot be separated from gender. This is because the notion that the two facets of identity intersect, which brings to mind a Venn diagram in which race and gender exist both inside and outside the intersection. *See* Devon W. Carbado and Mitu Gulati, *The Fifth Black Woman*, 11 CONTEMP. LEGAL ISSUES 701, 706 (2001) ("Fundamental to intersectionality theory is the notion that race and gender are interconnected; they do not exist as disaggregated identities.").

and women of color.⁹ WLS is not alone in unintentionally framing women's issues in race-specific ways. Rather, this article uses WLS as an example of the way in which the transparency of white women's racial identity marginalizes women of color. Because programming is designed by and for white women, women of color feel their identities and needs as women of color are being denied. This reinforces a racially segregated women's group, which is unfortunate because there is much to be gained from diverse and inclusive participation of all women.

Finally, the article proposes that, despite these problems of racial disparity, there is a need for WLS to address race openly to include all women's experiences. Without addressing systemic racial and sexual oppression in the law school, it will continue running rampant. I do not mean to suggest that by conducting a few dialogues about race, WLS will automatically have a racially diverse membership. However, white women need to confront the role race plays in the formulation of their identities. White women must recognize that their whiteness has shaped their experiences as women and that women of color have also different cross-pressures because of the intersectionality of race and sex. Through these 28 interviews with my female law student colleagues, it became clear that issues of low self-esteem and sexual harassment are prevalent in the law school. WLS needs to take immediate steps to confront these and other still unknown issues facing women in the law school community.

As a starting point for my critique of WLS, Part I of the article explains the essentialist critique of feminism. This section briefly traces the key components of the critique to

⁹ Thus, the challenge of this Article is to expose how white dominant culture within WLS subjugates the needs of women of color at the law school. As Anthony E. Cook argues, one of the major goals of Critical Race Theory "is to elucidate the ways in which those in power have socially constructed the very concept of race over time, that is, the extent to which White power has transformed certain differences in color, culture, behavior, and outlook into hierarchies of privilege and subordination." Anthony E. Cook, *The Spiritual Movement Towards Justice*, 1992 U. ILL L. REV. 1007, 1008.

demonstrate that the experiences felt by women of color at the University of Illinois are validated by scholarly arguments forwarded by Harris, Crenshaw and others. As this section discusses, race plays an important role in shaping the experiences of women of color law students.

Part II applies this essentialist critique to WLS as an organization. Three examples demonstrate the limitations of WLS when it fails to recognize the complex experiences of women of color. First, Susan Estrich's lecture on sexual oppression in the workforce illustrates how easily discussions of gender oppression can exclude discussions of race. The failure to acknowledge the disparate impact of sexism on women of color made their experiences barely visible. Second, in a recent domestic violence panel, the experiences of women of color again were overlooked reflecting the tendency to overlook racial identity when talking about sexual identity. Lastly, a summer job panel in which participants insisted on women's commonality and its failure to confront the contradictions inherent in women's interests demonstrates how any theory which oversimplifies the sites of women's oppression is fundamentally limited in its capacity to deal adequately with the particular concerns and perspectives of women of color. All three examples evince the need to incorporate the experiences of women of color in WLS programming.

Part III explores several implications of the essentialist critique on the WLS membership. This section proposes that WLS needs to be mindful of how race is addressed in its events and social activities. To foster a racially inclusive community, WLS members must honestly confront and include discussions of race within their programming. By specifically looking at the desires of women at the law school of differing races, ages and class backgrounds, it is evident that WLS currently fails to meet the needs of most women. The absence of discussions about racism in

WLS in programming signals to women of color that their experiences are not recognized or validated.

Part I – Theoretical Discussion

A. Feminist Essentialism: The Underlying Theory

A number of contemporary feminists have argued that attempts to formulate a unified women's identity fail to take difference seriously. The emphasis on a 'women's experience' places the experience and identity of women as such implying an unsustainable essentialism and ignoring the impact of race, class and sexual orientation upon the lives of women.¹⁰ Angela Harris explains gender essentialism as “[t]he notion that there is a monolithic ‘women’s experience’ that can be described independent of other facets of experience like race, class, and sexual orientation....”¹¹

¹⁰ See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity, Politics and Violence Against Women of Color*, 43 STAN L. REV. 1241 (1991) (“[t]his elision of difference in identity politics is problematic, fundamentally because the violence that many women experience is often shaped by other dimensions of their identities, such as race and class.”); Angela Harris, *Race and Essentialism In Feminist Legal Theory*, [hereinafter *Race and Essentialism*] 42 STAN L. REV. 581, 585 (1990) (“Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have traditionally been kept from speaking, or who have been ignored when they spoke, including black women. The first step towards avoiding this danger is to give up the dream of gender essentialism.”).

I have chosen to use race, class and sexual orientation as examples of other experiences when evaluating identity beyond gender, but I have only selected a few of the facets of identity. See, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN’S L.J. 206 (1990); Darren Lenard Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN L. REV. 561 (1997); Serena Mayeri, “A Common Fate of Discrimination”: *Race-Gender Analogies in Legal and Historical Perspective*, 110 YALE L.J. 1045 (2001); Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U. L. REV. 817 (1993). Other factors include: nationality, ethnicity, and religion.

¹¹ Harris, *supra* note 10, at 582, cf. Trina Gallo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master’s House*, 10 BERKELEY WOMEN’S L.J. 16, 19 (1995) (“Essentialism is the notion that there is a single woman’s, or Black person’s, or any other group’s, experience that can be described independently from other aspects of the person – that there is an ‘essence’ to that experience. An essentialist outlook assumes that the experience of being a member of the group under discussion is a stable one, one with a clear meaning, a meaning constant through time, space, and different historical, social, political, and personal contexts.”).

To isolate gender from race in one's experiences, one must first assume that gender and race are each distinct and that the impact of one can be neatly separated out from the other. The essentialist critique argues this division between gender and race is not possible.¹² Because women of color are at the intersection of these categories, they are unable to fragment their identities to conform with the agendas of either race-based or sex-based groups. Consequently, their needs as women of color become invisible.¹³ The focus on the commonality of women's experiences because they are women gives rise to a discourse in which the experience of Western, white middle-class women have been conflated with the experiences of all women.¹⁴ Accordingly, feminist essentialism views differences among women as a divergence from a standard that is defined by the experience of Western, white middle-class women.¹⁵

The anti-essentialism solution derives from the premise that all identity categories are unsteady and relational. For critics like Harris, feminist essentialism treats the experiences of women who are subject to multiple forms of oppression as merely additional problems: black women suffer from sexism plus racism; working class women are oppressed by sexism plus class structures; lesbian women suffer from sexism plus homophobia, and so on.¹⁶ Angela Mae

¹² Harris, *supra* note 10, at 589 (“Thus, in an essentialist world, black women’s experience will always be forcibly fragmented before being subjected to analysis, as those who are ‘only interested in race’ and those who are ‘only interested in gender’ take their separate slices of our lives.”).

¹³ See, e.g. Harris, *supra* note 10; bell hooks, *Theory as Liberatory Practice*, 4 YALE J.L. & FEMINISM 1, 4 (1991); Trina Grillo and Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, 1991 DUKE L.J. 397, 404.

¹⁴ See Gallo and Wildman, *supra* note 13, at 403 (“When socially-subordinated groups are lumped together, oppression begins to look like a uniform problem and one may neglect the varying and complex contexts of the different groups being addressed. If oppression is the same, then we are all equally able to discuss each oppression, and there is no felt need for us to listen to and learn from other socially-subordinated groups.”).

¹⁵ See *supra* note 10 (discussing that in a racist society like this one, the storytellers of women’s experiences are usually white and so “woman” becomes equated with “white woman”).

¹⁶ See Crenshaw, *supra* note 10, at 1242 (“My objective there was to illustrate that many of the experiences black women face are not subsumed within the traditional boundaries of race or gender discrimination as those boundaries

Kupenda explained the intersectionality between race and gender for women of color. “We [women of color] have some race issues in common with men of color, some gender issues in common with white females, and some separate issues and identities.”¹⁷

Black women can experience discrimination in ways that are both similar to and different from those experienced by white women and Black men. Black women sometimes experience discrimination in ways similar to white women’s experiences; sometimes they share very similar experiences with Black men. Yet, often they experience double-discrimination – the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women – not the sum of race and sex discrimination, but as Black women.¹⁸

This approach not only forcibly fragments the experiences of black, poor, and lesbian women, but also gives rise to the notion that the oppression women face as women is best identified by studying the position of women who are not subject to these other forms of oppression. This privileges Western, white, middle-class, heterosexual women. The assumption that mainstream feminism speaks to the needs of all women ignores those specific needs of women of color. bell hooks observed, “certainly it has been easier for women who do not experience race or class oppression to focus exclusively on gender.”¹⁹

The most troubling consequence of essentialism is the fact that it subordinates the development of discourse that can empower women of color. Feminism fails to integrate race

are currently understood, and that the intersection of racism and sexism factors into black women’s lives in ways that cannot be captured wholly by looking separately at the race or gender dimensions of those experiences.”)

¹⁷ Angela Mae Kupenda, *For White Women: Your Blues Ain’t Like Mine, But We All Hide Our Faces and Cry – Literary Illumination for White and Black Sister/Friends*, 22 B.C. THIRD WORLD L.J. B.C. 67, 71 (2002). Kupenda also argues that white women have their own intersectionality, “[w]hite women too are at an intersection. They find themselves in the position of both the oppressor and of the oppressed. At one juncture, they benefit by participating in the system manufactured by a racist society. At the other, they suffer as a result of gender oppression from a patriarchal and supremacist society.” *Id.*

¹⁸ Beverly I. Moran, *Keynote Address Delivered for the Journal of Contemporary Legal Issues – Conference on the Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 691, 695 (2001).

¹⁹ Martha Mahoney, *Whiteness and Women, In Practice and Theory: A Response to Catharine MacKinnon*, 5 YALE J.L. & FEMINISM 217, 220 (1993).

means that feminism's resistance strategies will often replicate and reinforce the subordination of people of color; likewise, the failure of anti-racism to integrate patriarchy means that antiracism will frequently reproduce the subordination of women. Pitting racism against sexism – or dismissing the former to footnotes – forces women of color to choose which aspects of their oppression they will confront in isolation of the others. Forcing this division is artificial since one's experiences are shaped by the intersectionality between both race and gender.

This presents a particularly difficult dilemma for women of color.²⁰ Mari Matsuda observes that “working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.”²¹ Thus, Matsuda encourages people to consider the multiple forms of subordination a particular act or structure of exclusion may involve.

Instead of clinging to unsustainable notions of a deep, unitary and stable woman's self, we must recognize that women are enmeshed in many and often contradictory discourses of race, class, and sexuality. From such a perspective, identities are multiplicitous, contingent, and context-bound. Harris argues that the examining of any one form of subordination is not possible without considering its interaction with other sources of disempowerment. Differences are always relational.²² Thus, identity is always defined in a specific context vis-à-vis specific others. Gender should be viewed as a relational concept and that the construction of gender attributes will vary according to race, class, sexual orientation, and nationality. The task of feminist theorizing is not to attempt to construct essences, but rather to explore these contingent

²⁰ Crenshaw, *supra* note 10, at 1244.

²¹ Mari Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189 (1991).

²² Harris, *supra* note 10, at 613 (arguing that legal theory must reflect a multiple consciousness).

relationships. From this anti-essentialist perspective, feminism constitutes a complex network of different strands, which necessarily link discourses of gender to those of race, class, ethnicity, and sexual orientation. Thus, racism becomes a fundamentally feminist issue.

B. Methodology

I interviewed 28 female second year law students in the Class of 2004 at the University of Illinois College of Law who participated in a voluntary discussion to address issues of WLS, race and gender.²³ The research was not meant to be qualitative research designed to provide additional material for my argument that WLS may unintentionally frame women's issues in race-specific ways. The 28 women were selected by contacting women leaders in different student groups at the College of Law. Of these 28, 11 were women of color: four Latina women, three Black women, and four Asian American women. One of these women of color is involved in WLS. The remaining 18 women are white: three of those women were on the WLS executive board and nine other women identified themselves as active WLS members. Of the 28 women, only one woman identified openly as a lesbian and she was white. I contacted more 40 women based on involvement in different activities and organizations at the College of Law and these 28 women voluntarily chose to talk with me, or at least answer an initial email survey. It was impressive and surprising how candid, reflective, and articulate these women were regarding

²³ Because the sample of women I interviewed was small, non-random, and concentrated entirely at one law school, I cannot claim to prove my premise that white women do not recognize their racial identity and women of color cannot separate racial from gender identity is systemic beyond my sampling. However, even from this isolated sample of students, a noteworthy analytical result can be gleaned about the differing constructions of racial identity.

The ages of those women interviewed ranged from 23 to 35. I interviewed only two mothers (one white and one black). I interviewed three Catholic women (two white, one Asian American), one Jewish woman (white), and two Christian women (white). Other women interviewed may be religious, however they did not share their religious affiliation with me.

their feelings about their identities at the law school; their involvement, or lack thereof, in WLS; and, the roles race and gender play in their individual law school experiences.²⁴

The interviews, lasting from half an hour to an hour apiece, consisted of a series of open-ended questions.²⁵ Beforehand, I explained the purpose of the interview and assured each woman that her identity would remain confidential. Each participant consented to the use of her interview for this article. Consequently, each woman provided the anonymous descriptive statement that accompanies her statements throughout the paper – this explains the difference in style or quantity of information noted after each quotation. The facts or examples of frustration and alienation identified arose organically from the interviews or surveys and the women were not pre-selected. The conclusions made in this essay were based on relying on notes from the interviews or copies of their written answers.

Part II – Does WLS fall victim to an essentialist critique?

A. Women’s Law Society:

An Overview About the Organization’s Mandate, Membership and Programming

“My impression of what WLS stands for is the unity and support of women at the law school. It is an organization that tries to bring to attention issues that affect women specifically. It is there for women to become united as a group. It is a way to get women to meet each other and learn more about each other and work on things for the benefit of themselves and other women.” – 24-year-old white woman from a small town in Southern Illinois.

“I was attracted to WLS because I look at it as a support group where people who will face similar challenges in the legal field can talk about these challenges with each other and offer advice and support.” – 24-year-old white, Christian woman.

²⁴For many of the women interviewed, the interview or survey was the first time we had met and despite that, they were honest and forthcoming with information about their experiences at the College of Law.

²⁵The basic questions included:

1. Do you notice your gender at the College of Law? If so, in what ways?
2. Do you notice your race at the College of Law? If so, in what ways?
3. Are you a member of WLS? If so, why? If not, why not?
4. Have you attended any WLS events? If so, which ones? What were your impressions?
5. What are your biggest fears upon graduation?

“WLS is an organization that allows women at the College of Law to get to know each other.” – 23-year old Black woman.

“When I first attended a WLS meeting, they did not seem to have any solid purpose other than getting women together at the law school which seemed like a pretty feeble purpose. I’m able to identify who are women in the law school on my own.” – 29-year-old white, Catholic woman.

“WLS is a resume builder for the executive board – that’s it.” –27-year-old Hispanic woman.

“I have never attended a meeting, so I have no clue what WLS stands for.” – 23-year-old Latina woman.

“Sometimes I do. In a smaller class, when I notice that I’m sitting with other minorities, and wonder if the other people in the class notice that as well. However, in class discussions, I really don’t feel that aware of it, usually because I think our classes here are fairly racially diverse, and when I look around the room, I see other minorities as well.” – 23-year-old Indian Christian woman.

“WLS – does that stand for White Law Students Society?” – 23-year-old African-American woman.

Examining differences between racial awareness for white women and women of color helps explain the subtle, but pervasive, effects of attempting to discuss women’s issues without mention of race. The result is that the discussion is among and for primarily white women, as women of color feel their identities and needs as women of color are being denied. In particular, the events WLS plans, and the way discussions of race are excluded, reinforce a racially segregated women’s group. The choices not to discuss race do affect minority women’s decisions to participate.

WLS raises awareness of women’s issues through speakers, seminars, informal discussions, and raises money for education and philanthropy. While in name and mandate, WLS is the organization that focuses on the needs of *all* women, the membership has been mostly white women. An executive board – consisting of a president, vice-president, treasurer,

secretary, symposium co-chairs, and a 1-L coordinator, all of whom plan the activities that the organization will undertake – largely runs the organization.

WLS promotes the active exchange and mentorship between female faculty members and students. To that end, WLS organizes monthly dinners which each showcase a different female faculty member. These dinners are hosted at varying restaurants around Champaign-Urbana, and are an opportunity for 20-30 students to meet one of the female professors at the law school in an informal setting. Typically, the cost of these dinners is quite expensive, costing between 20-22 dollars per person.²⁶

WLS also frequently co-sponsors panels and speaker series ranging on topics pertaining both about women's issues, and more narrowly, about women's experiences at the law school. Recent examples of these panels include: a lecture given by Susan Estrich about sex and power in the workplace, a domestic violence panel, and a South Africa panel. Each year, WLS also sponsors panels specifically for WLS members about finals and summer employment. Unlike the first category of panels, these more informal panels on how to survive the first year of law school are usually run and conducted by current WLS executive board members.

This year WLS instituted a new mentoring program where second and third-year students are paired with incoming first-year members to help ease their transition into law school. There has only been one formal introductory meeting in late September and the success of the program will depend entirely on the individual pairings.

²⁶ For example, one woman of color complained about how the cost of these dinners made attendance prohibitive and that the cost of these dinners implied that only those women with money could participate in WLS events.

B. Evaluating WLS Using an Essentialist Critique:
Is WLS Honoring Its Mandate In Representing The Needs Of *All* Women In Its
Programming?

Defining a common women's experience and what is meant by gender oppression has prompted some to analyze the situation of women by stripping away race, class, and sexual orientation. For women of color, race and gender cannot be separated like that, but the same is true for white women.²⁷ By not recognizing the intersection between racial and gender identity, WLS indirectly elevates white, middle-class experience into the norm, making it the prototypical experience. Because WLS touts solidarity and commonality of experience because of shared gender, the power dynamics generated by WLS create and perpetuate the cultural and psychological manifestations of racism. In turn, because of the lack of attention paid to racial difference, women of color shy away from WLS.

By isolating several programmatic examples where mention of race was relevant and ignored, one can trace a pattern of gender essentialism within WLS. Gender has been operationally defined without regard to race, class or sexual orientation – gender oppression stands alone. This section will evaluate the absence of differing racial perspectives in three WLS programs within the past year: a lecture on sex and power, a domestic violence panel, and a job panel, and speculate reasons why race was not mentioned. It is my contention that discussions of race are neglected because they are seen as diluting the thrust of gender oppression.

Because most of the executive board of WLS are white women, who are largely unaware of their racial identities, their programs neglect to address women's experiences as different because of racial, class, and sexual forces. This reinforces a cyclical pattern. Since white women are in charge, they plan programs that appeal to other white women. Accordingly, white women

²⁷ Gallo, *supra* note 11, at 19.

come to the events and become the future leaders of WLS, who, in turn, plan events catered to white women, and so on. Because many white women at the law school believe their race is irrelevant to their experiences as women here, it is unsurprising that their programs do not account for discussions of race.

1. Susan Estrich: Sex & Power

Essentialism in feminist theory has two characteristics that ensure that black women's [and all women of color] voices will be ignored. Women leached of all color and irrelevant social circumstances, issues of races are bracketed as belonging to a separate and distinct discourse – a process which leaves black women's selves fragmented beyond recognition. Second, feminist essentialists find that in removing issues of "race" they have actually managed to remove black women – meaning that white women now stand as the epitome of Woman. Both processes can be seen at work in dominance theory.²⁸

Every year, WLS plans an annual symposium regarding women and the law. It is the biggest event for WLS each year, lots of advertisement and attention are paid to the symposium. The topic of the conference changes annually, largely based on the decision of the symposium chairs who plan the event. Last year's speaker was Susan Estrich, a notorious feminist scholar and advocate, who is a professor of law at the University of South California. The topic of her lecture was "Sex & Power," addressing issues of sexual inequality and the glass ceiling. Given her national prominence, her presentation was very well attended by law students, faculty, community groups, and members of the local media.

Because Estrich claims to address the situation of sexual discrimination facing all women, she focuses on what she considers to be the collective experiences of women. She seems to believe that by focusing on the women's commonality of gender, she can still effectively incorporate into her analysis the diversity of women's experience of oppression. While Estrich

²⁸ Harris, *supra* note 10, at 591.

identifies the role of race briefly, the race specificities appear to have a limited impact on the development of her theoretical assumptions, analysis and ultimate conclusions.²⁹

During the lecture, and also peppered throughout the book on which the speech is based, are countless examples of women's struggles with gender discrimination in the workforce. As an initial matter, Estrich does not discuss the racial backgrounds of the individuals whose stories she re-tells. In only one example does Estrich identify the race of the woman's story being told, that of Reveta Bowers, the sole woman of color mentioned.³⁰ The problem with Estrich's use of race is that she only discusses race when it pertains to a Black woman, but not in regards to the dozens of examples of white women. "We use our language to categorize by race, particularly, if we are white, when that race is other than white."³¹ Estrich's general omission of racial identity (except when discussing women of color) implies a unitary women's experience, unaffected by racial differences. By defining women of color as "different," while reaffirming the essentialist concept that white women are the norm, Estrich reinforces white racial domination.³²

²⁹ This critique of Susan Estrich's speech was heavily influenced by Angela Harris' critique of Catherine MacKinnon, *see supra* note 10.

³⁰ SUSAN ESTRICH, *SEX & POWER* 87-89 (2000) (detailing Bowers experience as the only Black woman on the Disney board).

³¹ Stephanie M. Wildman and Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 885 (1995).

³² Harris identifies this trend as the "nuance theory" approach to the problem of essentialism, "by being sensitive to the notion that different women have different experiences, generalizations can be offered about 'all women' while qualifying statements, often in footnotes, supplement the general account with the subtle nuances of experience that 'different' women add to the mix. Nuance theory thus assumes the commonality of all women – differences are all a matter of 'context' or 'magnitude'; that is, nuance." *See Harris, supra* note 10, at 595.

Erin Edmonds explains "nuance theory" as generalizations that are offered about all women while qualifying statements, often in footnotes, supplement the general account with the subtle nuances of experience that different women add to the mix.. Erin Edmonds, *Mapping the Terrain of Our Resistance: A White Feminist Perspective on the Enforcement of Rape Law*, 9 HARV. BLACKLETTER J. 43, 89 (1992). However, that which is specified as different (i.e. Black women's experiences) means once again that white women are the norm.

Estrich only mentions race one additional time during her speech, and it is as a verbal “footnote.” She candidly acknowledges when talking about women succeeding in corporate culture, it is assumed that those women are white.³³

The situation for minority women is worse still. When people speak of women making inroads in corporate America, they almost always mean white women. A 1999 Catalyst survey of 1,735 women of color from thirty leading U.S. companies found that women of color were twice as likely as white women to believe that there had been no progress at all in their advancement opportunities, that a majority thought existing diversity programs to be totally ineffective, and that the appropriate metaphor for minority managers was not a glass ceiling, but a concrete barrier, which leaves even the highest-ranking minority women unable to imagine the possibility of change.

Few women of color run major companies and women of color face additional hurdles to succeed in corporate culture.³⁴ Having acknowledged that, Estrich then stops her discussion of race, sex and power – and resumes her focus exclusively on sex and power. Since racism was only acknowledged by Estrich in “brackets,” it results in both a cause and an effect of defining and creating women as white women.³⁵

For Estrich, there are systemic gendered barriers affecting women (read white women) in the corporate workforce. Despite Estrich’s observation of the inadequacy of discussions about women of color in corporate America, she repeatedly continues to ignore race. She justifies her essentialism by pointing to the essentialism of the male-dominated majority, “[w]ith rare exceptions, the standards that measure success in the public world continue to be the standards applied by men to men and women.”³⁶ Her omission of race directly impacts her analysis.

³³Susan Estrich, the 6th Annual Women’s Law Symposium: Sex and Power (Feb. 6, 2002), at <http://www.law.uiuc.edu/i-auditorium/presentation.asp?id=13&bandtype=high>; see also ESTRICH, *supra* note 46, at 78-79. This is the only other time in the book that Estrich mentions race.

³⁴ See ESTRICH, *supra* note 46, at 78-79.

³⁵ Harris, *supra* note 10, at 593.

³⁶ ESTRICH, *supra* note 46, at 113.

Estrich characterizes invidious subtle gender discrimination as a central impediment to women's success in the workforce. Such a characterization blurs race and class differences. Because race- and class- subordinate individuals are burdened by multiple forms of social and economic exclusion, they can likely point to other central experiences in their lives, such as racial discrimination and economic deprivation.

Ironically, Estrich also points out that facially neutral standards and categories often do not produce neutral results. "And its argument still holds that when seemingly neutral factors limit a whole category of people from participating fully in the workplace, those factors deserve a form of strict scrutiny to determine whether they are really necessary or just the way that we've always done it – *we* being the group that is advantaged by the status quo."³⁷ Despite the recognitions that seemingly benign categories can have discriminatory results, and, that minority women face additional complications to succeed in the corporate workforce, Estrich still postpones any mention of race for another project.

For women of color in the audience, Estrich's disregard for issues facing women of color in the workplace was overt and pronounced. Estrich's essentialist, "color-blind" approach was nothing more than an analysis of what obstacles face white women in the corporate world, but masquerading as a general account facing all women. The transparency of whiteness and white privilege inform Estrich's ability to save issues of race in the glass ceiling for another day. It informs Estrich's statement that she can only do justice to sexism, or racism, but not both. A woman of color is not capable of neatly separating the two, because in any context, she is affected by both.³⁸ For minority women, succeeding in the corporate workforce is a complex

³⁷ *Id.* at 98-99.

³⁸ I would argue that white woman are also equally affected and informed by their sex and their race, even if they do not know it.

experience, and an experience deeply rooted in both race and gender. Thus, Estrich's approach recreates the dominant discourse's notion of woman in the image of a white woman, while relegating the experiences of women of color to only isolated footnotes.

Estrich's focus on the experiences of white women would not be so problematic if she did not present her views as inclusive of the interests of all women. It is precisely in purporting to speak to the experiences of all women that Estrich gains legitimacy for her theory.³⁹ Estrich may recognize the importance of confronting women's diversity, but her theoretical framework, and most importantly, her emphasis on a common site of women's oppression limits her capacity to do that which she aspires to do – to engage in the collective process of explaining women's oppression in the workplace.

2. Domestic Violence Panel

Because October is nationally recognized as Domestic Violence month, WLS decided to co-sponsor an informative panel on domestic violence together with Sexual Orientation in Legal Issues Society. Although WLS may purport to have identified the form of domestic violence oppression common to all women, the particular forms of oppressions experienced by women of color were not sufficiently visible. Ultimately, the insights with regard to the relationship between gender and race only marginally captured the complex and powerful role that racism plays in the lives of women of color. The core difficulty with the WLS domestic violence panel was in the uneasy fit between the emphasis on comprehending the defining commonalities of the group women and the insight that race, gender, and class are necessarily interconnected. Because the domestic violence panel never explicitly addressed the full implication of this latter insight

³⁹ Cf. Marlee Kline, *supra* note 36, at 123, (critiquing Catharine MacKinnon for her marginalization of women of color in her work on pornography and rape).

for the general emphasis on women's commonality, WLS' construction of the cycle of abuse in domestic violence limited its capacity to capture the complex impact of racism and sexism in the lives of women of color.

In tandem with the panel, WLS set up an information table with different resources and reading materials about domestic violence for the student body to read in the law school pavilion. Three posters were posted on the table: one showing a white woman battered, one showing a Black woman battered, and one showing a group of batterers, all of whom were Black men.⁴⁰ The posters of the battered women espoused that domestic violence is a reality, “[w]hile you’re trying to find the right words, your friend may be trying to stay alive.” The second poster, featuring only images of black people, was targeted towards a black audience. The top of the poster read, “[s]ometimes you need to get into other people’s business.” Directly underneath was a photograph of two black men sitting on the hood of a car engaging in a “serious-looking” discussion. Then, the caption beneath the picture of the two men read, “[y]ou may feel uncomfortable talking with your friend or family member about what is going on in their relationship. But if someone you care about it is either hitting or being hit, it is time to make their business your business.” Next, there was a picture of two black women talking. Finally, in huge lettering, the sign noted, “Domestic Violence is Everybody’s Business. For free info on how you can help stop domestic violence in the African American community, call 1-800-END-ABUSE.” This poster was the only mention of abuse particular to any racial community; there was no equivalent poster for any other racial group.

⁴⁰This display proves Crenshaw’s argument that “[s]trategies for increasing awareness of domestic violence within the white community tend to begin by citing the commonly shared assumption that battering is a minority problem... Yet these comments seem less concerned with exploring domestic abuse within ‘stereotyped’ communities than with removing the stereotype as an obstacle to exposing battering within white middle- and upper-class communities.” Crenshaw, *supra* note 10, at 1247.

At the panel, the first speaker spoke generally about the cycle of domestic violence and the current legal remedies available to survivors. The second speaker talked specifically about same sex domestic violence.⁴¹ Unlike the aforementioned poster, there was no mention of specificity of women of color's experience of domestic violence during the talk. Linda Ammons argues that, "[t]he African-American woman was and continues to be subjected to the triple jeopardy of racism, sexism and classism. These 'isms' are control mechanisms used to subordinate black women."⁴² However, the panelists did not question whether race or class inequality limit, or even preclude, people of color from seeking help to protect against further domestic violence abuses. Such an examination of race and class, even if only brief and tentative, would have enriched the analysis because racial and class hierarchies create numerous stereotypes that impact women of color and that information white women's perceptions of them. After specifically raising the connection between race and domestic violence in the literature posted in the pavilion, it seemed appropriate, and necessary, to include some mention about women of color's experiences with domestic violence.

As the first panelist explained, battered women are not often believed because society has either historically been in denial about the pervasiveness of domestic violence or because abused women who do not leave their partners are thought to be lying about the seriousness of the abuse they suffered. However, the panelist failed to mention was that women of color face additional hurdles because they must overcome the presumption that their race predisposes them to engage

⁴¹ While WLS should be applauded for addressing the intersectionality between gender and sexual orientation at this event, there was still a missed opportunity to discuss race and gender, or even the interplay between race, gender and sexual orientation.

⁴²Linda L. Ammons, *Mules, Madonnas, Babies, Bath Water, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, WIS L. REV. 1003, 1039.

in and enjoy violence.⁴³ Battered African-American women are also particularly vulnerable because of the lack of or underutilization of resources.⁴⁴

Under racial hierarchy, blacks are considered sexually deviant – promiscuous and predatory.⁴⁵ This assumption was affirmed by the poster that pictorially showed only Black males capable of committing domestic violence. Understandably, one Black woman expressed her extreme disappointment in the racist portrayal and implications of display. The choice to display two posters portraying the victims of domestic violence as being both white and Black while only having one poster of batterers, who were Black, caused controversy among students.⁴⁶

Unfortunately, the domestic violence panel was another example where WLS neglected to consider the racial implications of the program. The failure of WLS to integrate race into the discussion about domestic violence replicated and reinforced the subordination of women of color because it ignored intersectional issues that particularly face women of color.⁴⁷ Those planning the event were white, and likely neglected to consider the racial dimension of domestic violence because they are not confronted with issues of their own racial identity at the law school.

⁴³ See, e.g. *id.*, at 1019, 1022. (“Police trainees are frequently told that physical violence is an acceptable part of life among ghetto residents. In other words, blacks are ‘normal primitives,’ or violence-prone. African-American women who are battered face unique challenges in getting relief and support....The inconsistency of police intervention and the lack of other community resources, including hospitals, contribute to the acuteness of violence in African-American neighborhoods.”)

⁴⁴ See, e.g., *id.* at 1021 (citing as an example that African-American women do not seek help from shelters because they believe that shelters are for white women.); Crenshaw, *supra* note 10, at 1260-1.

⁴⁵ The pictorial image of the two black men as perpetrators in the poster placed in the law school pavilion is proof of this societal stereotype.

⁴⁶ After seeing the racial disparity on the domestic abuse posters, a woman of color emailed the WLS email account to express her disappointment with implicit portrayal of only Black men as batterers. The President of WLS emailed this student back to apologize and offered to meet with the student to further discuss the situation, but the student declined.

⁴⁷ This conclusion is controversial because there is a competing concern of “airing dirty laundry,” which attempts to make domestic violence an object of political action may only serve to confirm negative stereotypes about people of color. See, e.g., Crenshaw, *supra* note 10, at 1245.

3. Summer Job Panel

Last February, when the first-year law students began actively looking for summer employment, WLS hosted a job panel where second-year members of WLS discussed their previous summer job experiences, the challenges and rewards of the different job options, and answered questions. There were eight women (seven of whom were white) chosen for their diverse job experiences (and definitely not for their racial diversity) to make-up the panel. They each talked about their specific jobs and also addressed issues relating to gender, such as: dress code, sexism in the workplace and balancing work and family, in their work experiences. Since the panel was not racially diverse, there was no mention of race. In telling the story of what women faced in their summer jobs, the experience of women in summer employment turned out to be only white women's experiences.

Since the panel existed of WLS executive board members and their friends, it resulted in presenting a very homogenous experience of racial identity. The topic of the panel was to share "women's experiences" in the workforce, but since only white women's experiences were shared, the experience of women practically meant the experience of white women. This is not to say that women are not oppressed on the basis of gender or even that white women do not experience gender oppression, or that gender oppression is not an important issue. Rather, the experience of being a woman of color cannot be described in any way that sees only what is done to women, that what happens to white women cannot be usefully described without further examination as what happens to "women," and that focus on gender oppression hides both racist oppression and the strength, struggles, and multiple interests of women of color. Women of color should not have had to fragment their experiences into racial and sexual oppression in order to

identify with the experiences of the women who experienced different treatment because of their gender.

Because the organizer likely saw the racial specificity of her own life and the lives of those other white women on the panel as invisible, while it was visible or obvious to people defined outside the circle of whiteness. To meaningfully address the experiences of women in summer legal jobs, experiences with racial oppression cannot be disregarded – they cannot be classified as race-based, rather than gender-based oppression. Women of color’s experiences that are not shared with white women must also be included in dialogues about women’s experiences in the workforce.⁴⁸

Race is not merely another form of oppression that happens to women of color, but a part of the experience of all women.⁴⁹ Women of color should not have to refigure their experiences to conform with either exclusively racial or sexual harms. It is likely that unwanted conduct or treatment will be not only because these women are female, but because they are also women of color.

C. Racial Identity at the College of Law

1. Overview

Trends of women’s participation in WLS reflect the significance of racial experience in shaping women’s identities. By examining the racial awareness of these 28 women and also three recent major WLS events, it is clear that issues of racial complexity in shaping sexual

⁴⁸ *Open Letters to Catharine MacKinnon*, 4 YALE J.L. & FEMINISM 177, 179 (1991).

⁴⁹ Mahoney, *supra* note 19, at 221 (“We cannot understand race without seeing women as subjects and recognizing women as differentiated actors. If race is not simply to mean ‘otherness’ or ‘blackness’ – if all people have a ‘race’ that is part of the social construction of race – then we must critically examine the participation of white women as actors in society. This inquiry involves looking both at women and how we understand ourselves, and at whiteness and how white people understand (or fail to understand) ourselves.”)

identity are excluded from discussion. Ignoring race in WLS programs has resulted in a lack of involvement in the organization by women of color.

Given that WLS excluded discussions about race at panels and lectures addressing “women” as a whole, those programmatic choices reinforced the notion that women of WLS are white, middle-class women. Because of the transparency of whiteness as a race, white women on the executive board systemically neglect to consider the relevance of race in shaping one’s identity or affecting one’s experiences with sexual oppression. Programming that does not include women of color’s experiences results in an alienation of women of color to attend future events. As a result, the pattern of neglecting racial identity becomes systemic. White women plan events for their membership, who are white women. Those younger white women become the next generation of WLS leadership and the cycle continues. Regardless of the intentions of the WLS executive board, the denial of women of color’s experiences when talking about women’s issues results in racial marginalization.⁵⁰

2. White Women’s Responses: Does Being White Count As A Race?

“No, I can’t say that I am specifically aware of my being Caucasian at any specific times at the law school. Maybe if I am talking to several people of another race, I may note it. But, of course, I am in the majority here.” – 23 year-old white woman.

“I guess since I am white this is not a characteristic about myself that has ever been a challenge for me.” – 24 year-old white woman.

“In many ways, I’m not aware of my race. I guess that it goes with being in the majority but race is not something that shapes my identity on a predominate scale. However, when I see groups of minorities sitting together and chatting, I do recognize that I’m not in one of those groups. It almost makes me feel as if I’m missing out on a really cool network/fraternity with shared experiences that I will never know.” – 23-year-old white woman.

⁵⁰ Grillo and Wildman argue that even well-intentioned comparisons or analogies between sexism and racism perpetuate white supremacy by decentering the experiences of people of color, unfairly appropriating their suffering in a manner that distorts its unique nature and magnitude and obscures the racial privilege enjoyed by white women. See Grillo and Wildman, *supra* note 13.

“Before noticing my race, I note my sexuality and my religion. I am clear about why I am and how I am – I cannot extricate the lesbian any more than I can being Jewish. I have always been both.” – 27 year-old white, Jewish, feminist woman.

“The only time that I really gave my race any thought is when I realized that I didn’t qualify for any of the job fairs/career conferences because they are tailored to being a minority.” – 23 year-old white woman.

All female law students struggle to adapt to law school and to construct lives under conditions of male domination. But race is also a social construction, one in which the participation of white people is often peculiarly invisible. The white women interviewed mainly thought of themselves as “without a race,” rather than as white. White women largely perceived other whites as individuals who had no significant racial characteristics.

Whites are privileged in that they do not have to think about race, even though they have one. White supremacy makes whiteness the normative model. Being the norm allows whites to ignore race, except when they perceive race (usually someone else’s) as intruding upon their lives.⁵¹

When asked to first describe themselves, none of the white women mentioned their race. They were unlikely to see themselves in racial terms, perhaps in part because they did not regard themselves as racially distinctive. Thus, whiteness took on a transparent quality when white women were interacting with other whites, in the absence of people of color.⁵² “Whites do not look at the world through a filter of racial awareness, even though whites are, of course, a race. The power to ignore race, when white is the race, is a privilege, a societal advantage.”⁵³ Because

⁵¹ *Id.*, at 403.

⁵² Barbara Flagg defines the transparency phenomenon as “the tendency of whites not to think about whiteness or about norms, behaviors, experiences, or perspectives that are white-specific. Transparency often is the mechanism through which white decisionmakers who disavow white supremacy impose white norms on blacks. Transparency operates to require black assimilation even when pluralism is the articulated goal; it affords substantial advantages to whites over blacks even when decisionmakers intend to effect substantive racial justice.” Barbara J. Flagg, *“Was Blind, But Now I See”*: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 954 (1993).

I find it very conflicting to use the term “women of color” because it only feeds the basic assumption that most white women interviewed have about their race that they are “without race.” White women also have a race.

of the ease of forgetting their race at the law school, most white women never thought about the possible racial implications of their actions.⁵⁴

Only when expressly pressed about her race at the law school did any white woman address her racial identity. White women's consciousness of their whiteness was predominantly unconscious and became noticeable only when interacting with people of color.⁵⁵ "For most whites, most of the time, to think or speak about race is to think or speak about people of color, or perhaps, at times to reflect on oneself (or other whites) in relation to people of color."⁵⁶ As an example, one of the women interviewed above only noticed her whiteness when she saw a group of people of color together and then she felt envious of their camaraderie.⁵⁷ She never noticed when race when a group of white females congregated together; rather she only noticed race when a group of people of color were together and she felt resentful that she could not take part.

Because whiteness was seen as the norm, it was hard for these white women to see their own whiteness – both when they interacted with the women of color and also when they

Thus, to use the term "women of color" to mean only Latina-, African- and Asian-American women is to ignore the "color" of white women. However, I have still chosen to use the term "women of color" because of the term's frequency in other scholarship and because I could not come up with another term that would as succinctly encapsulate Latina-, African-, and Asian-American women.

⁵³ Stephanie Wildman and Adrienne Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 896 (1995).

⁵⁴ Flagg, *infra* note 51, at 981 ("Transparency supports the stronger, affirmative argument that unconscious race-specific decision making is so common that it is in fact the norm for white decision makers.").

⁵⁵ Professor Nekima Levy-Pounds provided an example of the pervasiveness of the white majoritarianism by addressing the racial implications of flesh-colored band-aids. Flesh-colored band-aids are made for only made for those with Caucasian coloring. This is only a small example about the dominance of the white majority race but its simplicity reveals how frequently white dominance exists without much attention paid.

⁵⁶ Flagg, *infra* note 51, at 969 (1993).

⁵⁷ *Cf.* Martha Mahoney, *supra* note 19, at 235 ("For example, note the feeling of exclusion that arises when white college students notice black students all sit together but don't also notice that the white students all sit together. And whiteness can re-create itself without the conscious will to exclude, as when people interview and hire through friends and acquaintances and find desirable candidates to be others like themselves.").

interacted with their fellow white classmates. Race did not seem to be involved in their daily law school lives. “This happens when we [white people] interact with people of color thinking that we are acting as individuals but are in fact acting as part of a white pattern. It also happens when we interact with other white people in ways that seem attached to individuality, humanity, or personhood, but that are not consistently accorded to people who are not white.”⁵⁸ Because these women did not account for their own racial identity as white women, they were unable to further see the impact of their own racial dominance on others. White women must understand that they are thinking racially even when they are not thinking about women of color.⁵⁹

White women’s ignorance of their own racial identity was particularly apparent when talking with several women on the executive board of WLS. They believed that discussions of “women’s” issues could be inclusive without mention of racial differences. For example, they argued issues of parity in employment affected all women, so the Susan Estrich lecture and other discussions about employment opportunities helped all women who attended, regardless of their racial identities. Moreover, these women felt discrimination based on preconceived notions of race were best suited to be addressed by racial and ethnic groups, WLS needed to concentrate its finite programmatic efforts confronting women’s issues. The underlying fear was to fragment women’s experiences by different sub-classifications would just weaken the commonality of women’s experiences. Recognizing the diversity of women’s experiences in theories will merely encourage superficial treatment of our differences.⁶⁰ Additionally, there was a level of

⁵⁸ *Id* at 236.

⁵⁹ *Id* at 221, 247.

⁶⁰ Marlee Kline labels this critique as “commatization” – as a punctuational device whereby individual groups are enumerated as proxy for a larger classification, as, for example, when diverse categories of people are listed, such as “social class (comma) women (comma) blacks (comma) gays (comma) youth (comma) and so forth.” The concern is that the array of commatized groups in this example not only suggests that all characteristics are of equal significance, but also submerges the intersections among different forms of oppression. Marlee Kline, *Race, Racism,*

resentment with the suggestion of having to change the scope of WLS programming since women of color have traditionally not attended WLS events. With this backdrop, it is unsurprising that current WLS programming neglects any mention of the intersectionality between race and gender.

3. Women of Color: Race First⁶¹

“I am aware of being an Asian-American more than being a woman, at least for me, because the ratio of female to male students is greater than the ratio of Asian-Americans, or even all minority students, to white students.” – 25-year-old Asian American woman.

“White people remind me of being Latina every day here by greeting me in Spanish, as if they are doing me the favor of speaking to me in Spanish. Also, I believe that some white students feel that minority students are taking slots of ‘deserving’ white students that could have gotten into the College of Law.” –23-year-old Latina woman.

“I am a Black Woman, I cannot separate my race from my sex, cannot separate racism from sexism. So don’t ask me to choose, I can’t.” –23-year-old Black woman.

“When people look at me as if I do not belong here at the law school, I cannot figure out whether it is because I am Asian, female, or both.” –26-year-old Korean American woman.

“I am always curious whenever I meet someone new whether they are acutely aware of the fact that I am a woman of color or whether I am just another law student to them.” – 23-year-old South Asian American woman.

“First, I am an African-American. Then, I am a woman.” 23-year-old African American woman.

For most women of color, race and gender are inseparable.⁶² In contrast with the white students, all women of color mentioned their race explicitly as being integral to their identity at

and Feminist Legal Theory, 12 HARV. WOMEN’S L.J. 115, 124 (1989) (citing Mary O’Brien, *The Commatization of Women: Patriarchical Fetishism in the Sociology of Education*, 15 INTERCHANGE 43, 43-44 (1984).

⁶¹ Gallo, *supra* note 11, at 27 (“Oppression based on my race has always seemed closer to my rage and has reached a place more central to my being than oppression based on other aspects of my self. For years, I would have said without a doubt, without a moment’s hesitation, that for me, race came first; gender, though important, came second. In the oppression sweepstakes, I had my money on the “race” horse. If pressed, to be made to choose which part of myself is most important to me.”).

⁶² See, e.g., Margaret E. Montoya, *Mascaras, Trenzas, Y Grenas: Un/Masking the Self While Un/Braiding Latina Stories And Legal Discourse*, 17 HARV. WOMEN’S L.J. 185, 191 (1994) (“The separation of the two symbols [a Chicano symbol of the aguila (a stylized eagle) and a woman symbol] reminds me today that my participation in the Chicano movement had been limited by my gender, while in the women’s movement it had been limited by my

the law school. Gender was not the sole factor in determining their femaleness. “Identity for people of color is multidimensional. The construct of race, as one dimension of identity, is multi-layered and multifaceted. This statement is descriptive rather normative.”⁶³ Every woman of color mentioned her race as being critical to how she was perceived by others.

The women of color interviewed found it difficult, if not impossible, to separate experiences they attribute to their gender from experiences they attribute to their race, class, or other characteristics.⁶⁴ For example, several women mentioned that during job interviews, they were treated differently by possible employers than males of their same race and also from white women. One Asian American woman mentioned that she was repeatedly asked about when she immigrated to the United States; she has been an American citizen since birth. A Latina woman explained that several times she was asked how her family felt about her decision to become an attorney. Another Latina woman noted that during one interview, she was asked her opinion about the movie *Selena*⁶⁵ – a question that likely would not have been asked to Latino males or white females.

ethnicity. I drew power from both movements – I identified with both – but I knew that I was at the margin of each one.”).

⁶³ e. christi cunningham, *The ‘Racing’ Cause of Action and the Identity Formerly Known as Race: The Road To Tamazunchale*, 30 RUTGERS L.J. 707, 709 (1999).

⁶⁴ Some women felt that if they had to choose between their gender and their race, people identify them as being a person of color before being a female. Once asked for elaboration, however, most of their answers reflected distinct treatment for being women of color that encompassed both sexual and racial ignorance.

⁶⁵*Selena* is a movie about a Latina pop singer and her rise to fame and starred Jennifer Lopez. SELENA (Warner Bros. 1997).

Part III – Why Does This Matter?

As the preceding examples illustrate, there have been numerous instances where WLS has discussed gender in an essentialist construction by isolating gender from other identity categories. Addressing gender without also recognizing the intersectionality between race and gender signals to women of color that their experiences are not going to be validated. Because of the racial exclusionary effect of “race neutral” programming, WLS needs to be mindful of how race is addressed in their events and social activities. To foster a racially inclusive community, WLS members must honestly confront and include discussions of race within their programming.

In Harris’s thoughtful critique, she explained how essentialism in feminist legal theory has betrayed feminism’s promise to listen to the experiences of real women.⁶⁶ Her suggestion is to focus on the notion of multiple consciousness as an appropriate way “to describe the world in which people are not oppressed only or primarily on the basis of gender, but also on the bases of race, class, sexual orientation and other categories in inextricable webs.”⁶⁷ WLS must confront the underlying racial domination that pervades gender essentialism to recognize that more than their biological sex, people’s identities are inherently shaped by race.

Anti-essentialists have prompted a rethinking of both the various descriptions of gender oppression that have been offered and the assumption that gender oppression can be described meaningfully in isolation. The danger in oversimplifying women based on an assumption of commonality presents the real risk that, by generalizing across a range of women, strength is derived only from white women who will oversimplify the experience of women of color.

⁶⁶ See *supra* note 4 and accompanying text.

⁶⁷ Harris, *supra* note 10, at 587.

A. The Need for Meaningful Dialogue about Race

For WLS to begin to live up to its mandate, of representing an organization for *all* women, there must be inclusion of race discussions in programming. As Martha Mahoney advocates, “[w]e [read white women] cannot merely invite women of color to join already established agendas, but must actually give up the exclusive power to define what feminism means.”⁶⁸ For WLS to become racially inclusive, women’s experiences must be welcomed and celebrated for their diversity of perspective and outlook. WLS’ agenda can no longer address only the needs of white, straight, and socioeconomically privileged women who purport to speak for all women.

White, privileged feminists have always maintained and still maintain hegemonic control over women’s discourse. If WLS attempts to maintain the appearance of uniformity and universality for strategic reasons at the expense of ignoring white women’s existing hegemonic position, there will be no meaningful union of women. Rather, there must be open acknowledgement of differences.⁶⁹ It is acceptance of the challenge to acknowledge and

⁶⁸ Mahoney, *supra* note 19, at 248.

⁶⁹ The vocabulary about discrimination and oppression is so general that it obscures the existence of systems of privilege and power. It hides the mechanism that makes oppression possible. Because we individualize racism, white women are worried to discuss the pervasiveness of privilege because of worry that it will classify them as racists. Consequently, white women are skiddish to address the privileges of their race and the large issues of power, privilege and oppression are not adequately addressed.

See, e.g., Wildman and Davis, *supra* note 47, at 888 (“To label an individual racist veils the fact that racism can only occur where it is culturally, socially, and legally supported. It lays blame on the individual rather than the forces that have shaped that individual and the society that they individual inhabits. For white people, this means that they know that they do not want to be labeled racist. They become concerned with how to avoid that label, rather than worrying about systematic racism and how to change it.”) They continue that all whites are racist because they benefit from systematic white privilege: “All whites are racist because we benefit from systematic white privilege. Generally whites think of racism as voluntary, intentional conduct, done by horrible others. Whites spend a lot of time trying to convince ourselves and each other than we are not racist. A big step would be for whites to admit that we are racist and then to consider what to do about it.” *Id.* at 897.

understand the heterogeneity and complexity of experience and oppression that will ultimately be WLS' strength, not its weakness.⁷⁰

The essentialist conception of gender reinforces a very racially segregated membership; by excluding mention of race and the implications of the intersection between race and gender, the only women left engaged are those other white women that also do not consider their race a critical characteristic of their identity. WLS must look to new and different ways to engage women of color – and this may result in a shifting agenda for the organization. For meaningful dialogue connection between women, there must be acknowledgment of the multiple identities of women by acknowledging the “complexity of the messages implied in our being.”⁷¹

B. The Need for Coalition Building about Gender

“[I]f we accept the idea that the law is aimed at correcting inequities, shouldn't it follow that lawyers and therefore the law schools should be the ones most adept at recognizing and correcting those inequalities?”⁷²

Despite experiential differences, there is a need for women of all races to work together in addressing systemic problems facing women in law schools.⁷³ The law school is one of the

⁷⁰ Building meaningful multicultural alliances between women at the College of Law is at times, difficult and is, at times, exciting. Phoebe Haddon recounted the work of the Society of American Law Teachers governing board and membership to address diversity and inclusion; the lessons she recounts are useful in beginning to develop our own strategy for WLS. “It became apparent that you cannot build a coalition without exposing yourself to other people and that the discomfort from such exposure can be unbearable without trust. It also became apparent that it is necessary to see other people as having authentic and valuable perspectives and to be prepared to adopt alternative strategies to advance the effort – even strategies with which you disagree – for the common good.” Phoebe A. Haddon, *Coalescing with SALT: A Taste for Inclusion*, 11 S. CAL. REV. L. & WOMEN'S STUD. 321, 322 (2002).

⁷¹ Harris, *supra* note 10, at 616 (citing Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV C.R.-C.L. L. REV. 401 (1987)).

⁷² Lisa A. Wilson and David H. Taylor, *Surveying Gender Bias at One Midwestern Law School* 9 AM. U. J. GENDER SOC. POL'Y & L. 251 (2001).

⁷³ There have been many groundbreaking studies on female law students' predominant feelings of alienation. *See, e.g.*, Kathleen S. Bean, *The Gender Gap in the Law School Classroom – Beyond Survival*, 14 VT. L. REV. 23 (1989); Paula Gaber, *Just Trying to Be Human in This Place: The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998); Marsha Garrison et al., *Succeeding in Law School: A Comparison of Women's Experiences at*

few places where we have a real chance to participate in an integrated community, one that is truly diverse across many power categories. Building a sense of community across these racial and power categories is a real and necessary challenge.

It was striking to note that irrespective of one's race, most female law students were concerned about two basic things at the law school: (1) they worried about their future legal careers because of low self-esteem about their law school performance, balancing family commitments with work and concern of unequal treatment in the workplace; and (2) the stresses of being female at law school in encountering different treatment for being female and responding to unwanted sexual advancements by law professors and fellow students. It signaled that while there is a definite need to discuss candidly about women's differences, there is also a need for a unified voice of women to address issues that are affecting most females at the College of Law.⁷⁴

Q: What are your biggest fears for entering the legal profession?

"That I won't do a good job. That my employer will realize what a completely incompetent lawyer I am. That my colleagues won't take me seriously and also will realize what an incompetent person I am. I am worried that raising a family will affect drastically what choices I can make and what choices are offered to me. So then, I will be known as the lady who is really incompetent and has a bunch of babies." – 24-year-old white, Catholic woman.

"I am worried that I'll be mediocre. Wherever I end up, I can't just be a mediocre worker...that is my biggest fear." –26-year old Asian American woman.

Brooklyn Law School and the University of Pennsylvania, 3 MICH. J. GENDER & L. 515 (1996); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Suzanne Homer and Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989-90); Janet Taber et. al., *Gender, Legal Education and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988); Catherine Weiss and Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988); Lisa A. Wilson and David H. Taylor, *supra* note 70, at 251.

⁷⁴ This is not to imply that all women's experiences or reactions to law school, their self-esteem, or concerns for the future are the same – but that by recognizing identity as being relational, meaningful dialogue and coalition building can be achieved.

“I fear entering the workforce and getting pregnant. I am fearful of where my family will fit with my career.” – 23-year-old Black woman.

“I have so many fears! For one, not being trusted with either a certain amount of work or being given a certain type of work because I am a woman; not being able to work with certain ‘traditional/good ol’ boy’ clients; being used as a trophy in meetings or a face in social activities with clients; balancing a family with work; and spending enough time with my future children.” – 23-year-old white female.

An interesting trend was to notice how most women felt conflicted about their decisions to become lawyers. The numbers were actually astounding: 23 out of the 28 women interviewed expressed feelings of failure, either in their study of the law or in their roles as friends and lovers, since beginning law school. The majority of women were deeply concerned that their “secret” as being failures in law school would soon be revealed to their classmates, professors, or future employers. One white woman noted that since coming to law school, she has just faced one disappointment after another: she did not believe her grades were reflective of the amount of time and work she devoted to her classes, she did not advance in the writing competition to join a law journal, and she got rejected from countless job interviews. Another Asian American woman said that law school has caused her to develop “a law school game face” to look confident in the Law Building, but at home and with friends, she has never cried as much as she has after receiving various rejections during her first year and a half of law school.

Women frequently mentioned the fear that their employers would sense their inadequacy once they entered the workforce. At least eight women (two women of color, six white women) worried that their summer employer would quickly discover how little they knew and that they would be denied full-time offers at the end of the summer. Many of the women described their accomplishments within the law school as “arbitrary” or “lucky.” As an example, two Latina women on Law Review expressed disbelief at being chosen to join, they both shrugged off the accomplishment to “luck” rather than the time and effort they put into their classes and writing

competition sample. A white woman who got very high grades during the first year of law school joked that she thought someone must have switched her anonymous exam number with “someone smart” to explain her academic success.

Many female students felt confused by desires to fulfill roles as both lover and mother as well as lawyer; and they felt guilt and apprehension that they could not be successful at both mothering and lawyering. Women spoke of the incompatibility of being a law student, or lawyer, and a lover or wife. The demands of a law job, given the limited number of waking hours, create a conflict between family and work. Many women cast law and family as opposites not only for fear that there was no time for both, but also for fear that the pursuit of one would make them unfit for the other.⁷⁵

Q: Are you aware of being female here at the College of Law? If so, in what ways?

“I feel a ‘peer pressure’ to look good here. This pressure was non-existent in my previous jobs. I feel that a huge part of my qualifications as a lawyer is based on my appearance.” – 24-year-old white woman.

“When a professor makes a joke about a sports team and directs it to a male student, I think about being a woman. I have not yet heard a professor address a comment like that to a female student.” – 23 year-old South Asian American woman.

“I feel alone. I do not feel like I can talk to anyone else at law school about my self-doubt and insecurity because then I would be sending a signal that since I feel doubt, I do not belong here.” – 23-year-old Black woman.

“When a professor looks at my breasts instead of my face, that is when I am most aware of being a woman. Really, I have yet to see a professor, male or female, check out some guy’s package. But then again, perhaps I am not paying attention closely enough.” – 24-year-old white Catholic woman.

“I think the legal profession is based on high competition, loudness, aggressiveness – and these are traditionally male characteristics. I don’t feel that these qualities come as naturally to me or most of my friends.” – 24-year-old white, immigrant woman raised by a single mother.

⁷⁵ Catherine Weiss and Louise Melling discovered similar results about women’s concerns for balancing work and family in their 1988 study. Weiss and Melling, *supra* note 72, at 1316-21.

“I have a professor who makes sexual advances towards me frequently. I really want to do well in his class and he teaches many of the classes in the area of law I want to pursue. What choice do I really have but to ignore it and hope that it goes away?” – 26-year-old white female.

“Law school is a very lonely experience. During the day at the law school, I am surrounded by people all of the time; but at the end of the day, I still feel alone. The guys in my classes have this instant connection with each other because they can talk about last night’s sports scores and highlights to break the ice. We women just do not have that. My friends from home do not understand my law school experience and just think I am being melodramatic and I do not feel like I connect with many law students, so I just feel isolated.” – 27-year-old white woman.

Although most people would like to believe that professors and students at law schools are sensitive professionals who would not engage in sexual harassment, numerous studies reflect a different reality.⁷⁶ It seems apparent from interviews that female students allow hostile and harassing behavior to go unchallenged because they feel uncomfortable reporting such behavior to the faculty or administration for fear of negative repercussions.

Four women (one woman of color and three white women) interviewed mentioned personal examples of unwanted sexual advances by fellow classmates or professors.⁷⁷ All four women internalized the harassment. One white woman articulated that the unsolicited sexual advances by a faculty member were perhaps deserved because she tended to wear revealing clothing. Each assumed that they were the only one facing such negative attention by a male colleague or professor. Two of the women (one white, one Asian American) complained of improper conduct regarding the same professor, who made unwanted and undesirable sexual advancements towards them individually in his “professional” capacity as both their professor and mentor. Tragically, because there is no existing support network or structure within WLS regarding sexual discrimination, none of these women knew of the experiences of the others,

⁷⁶ See, e.g., Bean, *supra* note 71, at 28-32; Morrison Torrey, Jennifer Ries, and Elaine Spiliopoulous, *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 268 (1998).

⁷⁷ Statistically, this is alarming. Out of a sample of 28 women, 14% of those interviewed had personal experiences with sexual harassment. I do not purport to assert that this statistic could be applied to the wider female population at the College of Law.

leaving them each to feel isolated and alone. For the one woman who chose to talk about it candidly with her friends at the College of Law, she was met with mixed reactions. Several of her classmates (both male and female students) encouraged her to ignore the problem, or just to wait until after she graduated before creating further problems for herself and the law school.

Eleven women (four women of color and seven white women) indicated that male students have made offensive comments about female students or female faculty members or have been uncharacteristically disrespectful to female faculty members. Eight women (three women of color and five white women) said that they have heard male students make inappropriate and demeaning comments about women's clothing. One white woman complained that several of her male classmates asked her questions about her bust size and encouraged her on numerous occasions to wear tighter clothing to look "hot." Four women (one woman of color and three white women) indicated that male students suggested that women in rape cases in their criminal law casebooks "deserved" to be raped. Several women also indicated that professors heard such comments but did not address them.

C. Conclusion

WLS needs to organize programs that adequately address the intersectionality between race and gender for all women at the law school.⁷⁸ It will be a difficult, and often painful, conversation.⁷⁹ "Recognizing that identity politics takes place at the site where categories

⁷⁸ Celina Romany beautifully articulated her hopes for feminism as, "advocat[ing] a broadening of horizons to show that the humanist project of subjectivity and agency need not be trashed but rather redefined. We need to expose those legal institutions which delay and obstruct the creation of conditions for strengthening identities, thereby enabling them to engage in dialogues which further refine our subjective perceptions and which serve as spaces for the creation of new narratives that are able to sustain the paradigm choices guiding the formulation of new legal meanings." Celina Romany, *Ain't I A Feminist?*, 4 YALE J.L. & FEMINISM 23, 30 (1991).

⁷⁹ Grillo and Wildman, *supra* note 13, at 408 ("Talking about racism/white supremacy is painful for whites as well.... Whites must confront their role as oppressors, or at least as beneficiaries of the racial oppression of others,

intersect thus seems more fruitful than challenging the possibility of talking about categories at all. Intersectionality exposes the various layers of social power that inform sexism.⁸⁰ Improving process, expanding communication, and making the politics of WLS more inclusive may address the risk of oversimplification to some degree.⁸¹ However, the complexity of this task ought not to be underestimated. Undoubtedly there will be disagreement on an array of issues, but fear of women's differences cannot push women of color into isolation.

Through an awareness of intersectionality, we can better acknowledge our differences and how to learn from one another's different experiences.⁸² Members of WLS cannot claim to speak for all women law students and then restrict the meaning of women to issues facing white women. They must see color, their own and others, and must celebrate and respect differences. In focusing on the commonality of gender, WLS members cannot obscure differences based on race, class, religion, sexual orientation, age, or any other aspect of identity. The category "women" must remain open and destabilized, so that all female law students might claim a piece of it. Gender difference cannot be viewed as being absolute or fixed. Definitions cannot be so as to exclude some women. Nor should WLS require a single core experience of all individuals to be included in the group, because there is no core experience that includes all women.⁸³ If

in a race-based hierarchy. The pain of oppression must be communicated to the dominant group if there is to be any understanding of racism/white supremacy. This act of sharing, however, contains the risk that the pain of oppression will be appropriated by the dominant group for its own purpose.").

⁸⁰ Cf. Hutchinson, *supra* note 10, at 643.

⁸¹ Crenshaw wishes "ultimately to disrupt the tendencies to see race and gender as exclusive or separable categories." KIMBELE CRENSHAW, *Beyond Racism and Misogyny: Black Feminism and 2 Live Crew*, in WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 114 (Gordon et. al. eds., 1993).

⁸² Crenshaw, *supra* note 10, at 1261.

⁸³ Wildman and Davis, *supra* note 29, at 884 ("A university is a special place, offering the opportunity not only to make friends, but also to listen intently to many others who are not friends. This opportunity to hear differing views is particularly important in a law school, making a law school within a university an even more special place. Law

women of color are in fact “women,” then inclusion of their racial concerns and experiences within WLS compels an openness of the category of “woman.”⁸⁴

and justice are symbolic of deeply held values in American culture. Law school is a place where we should be able to think about systems of privilege and the role of law in maintaining or constraining power.”).

⁸⁴ *Cf.* Cain, *supra* note 10, at 216 arguing “[I]f lesbians of color and poor lesbians are in fact ‘women,’ then inclusion of their racial and class concerns within feminism and the ‘open category’ woman, compels openness of lesbian theory and the category ‘lesbian.’”).