

# The Case for Kindness: Gender, Pedagogy, and Power in Legal Education

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### **Introduction**

In the past, I have inwardly cringed when students and faculty have referred to me as a “kind” professor. Although they have intended it as a compliment, I felt embarrassed being identified with a trait the legal academy does not particularly respect. Kindness, after all, is “singularly silent in accounts of teaching excellence, student satisfaction, or professional values.”<sup>1</sup> I judged it to be a term that is used to refer to someone who perhaps does not have other attributes that are seemingly of greater value in legal education, such as toughness, resilience, intelligence, and drive. Because I considered kindness to be a natural predisposition, and not something of particular difficulty to obtain,<sup>2</sup> its significance as an attribute of a law professor was lost on me.

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<sup>1</sup> Stephen Rowland, *Kindness*, 7 LONDON REV. OF EDUC. 207, 207 (2009).

<sup>2</sup> Adam Omary, *Is Kindness Genetically Predetermined?*, PSYCHOLOGY TODAY (2022), <https://www.psychologytoday.com/us/blog/natured-nurture/202208/is-kindness-genetically-predetermined> [<https://perma.cc/4UPA-B239>] (debating genetic essentialism versus genetic determinism).

Recently, however, I have had time to study the word, to consider its place in legal education, and to ultimately reconsider my position on its value. “Kind” with its etymological roots in “kin”<sup>3</sup> has close ties to family. In Old English, it comes from the word-forming element “cund,” which refers to being born of a particular nature, especially loving, and full of tenderness.<sup>4</sup> During the Industrial Revolution, as gender roles became increasingly segregated, it was unsurprisingly assigned to the more feminine domestic role, and “as an emotion was simultaneously feminized and devalued.”<sup>5</sup> As feminized qualities like empathy and kindness were excluded from emerging definitions of professional authority, they came to be regarded as incompatible with intellectual seriousness or leadership.<sup>6</sup> This gendered version of kindness makes it a trait that is valued in the creation of a safe and loving home, but is perhaps of little consequence in a competitive and more predominantly male workplace.

Indeed, the role of kindness is questionable in legal education. The ever-increasingly competitive nature of law schools for both faculty and students does little to encourage it. For professors, the collective demands of faculty positions push publication deadlines to the forefront and leave little room for serious consideration of best practices in teaching, let alone the role of kindness in the classroom. At most law schools, publications are rigorously encouraged and reviewed, while competent teaching is hardly acknowledged beyond tenure reviews and once-a-year faculty awards.<sup>7</sup> Similarly, for students, the stress of the classroom and the quest for the highest grades negates any thoughts of engaging in kind acts. Law school is simply too intense, fast paced, and competitive to worry about being kind.

In fact, for some in the legal academy, kindness could be considered a sign of weakness that suggests a girlish gentleness to be exploited. The law, on the other hand, is thought of as having mostly clichéd male traits; it is “rational, logical, dispassionate, objective, professional, intimidating, and demanding.”<sup>8</sup> As a profession, the law promotes tough-minded attorneys who can spot issues and who fight to protect their clients’ interests. In law school, therefore, law students are trained to solve problems in manners that seldom involve altruism or kindness. Instead, kindness is at best ignored and at worst, manipulated.

Faculty teaching traits that appear to be of more value in law school are similarly

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<sup>3</sup>*Origin and History of Kindness*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/kindness#:~:text=late%2014c.%2C%20%22kindness%2C,%2C%20philanthropy%2C%20kindness> [https://perma.cc/G6LX-MHFX].

<sup>4</sup> *Id.*

<sup>5</sup> Shoshana Magnet, Corinne Lysandra Mason & Kathryn Trevenen, *Feminism, Pedagogy, and the Politics of Kindness*, 25 FEMINIST TEACHER 1, 2 (2014).

<sup>6</sup> Manuela Tremmel & Ingrid Wahl, *Gender Stereotypes in Leadership: Analyzing the Content and Evaluation of Stereotypes About Typical, Male, and Female Leaders*, FRONTIERS PSYCHOLOGY 1, 14 (2023).

<sup>7</sup> See Ted Occhialino, Mitchell M. Simon & Robert L. Fried, *Herding Cats: Improving Law School Teaching*, 49 J. OF LEGAL EDUC. 256, 256 (1999) (“[D]espite the institutional lip service paid to teaching, scholarship and other outside activities are understood to be more highly valued than good teaching.”).

<sup>8</sup> Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J. OF L. AND FEMINISM 333, 335 (1996).

stereotypically masculinized. Student comments in law school evaluations suggest that they work the hardest for professors who are “‘learned,’ ‘rigorous,’ ‘brilliant,’ ‘demanding,’ . . . and ‘tough’.”<sup>9</sup> While professors of all genders do possess these qualities, these traits are unsurprisingly more often associated with men.<sup>10</sup> Women faculty, in particular, often navigate a double bind: they are expected to be warm and approachable, yet they are judged harshly if they do not also project a version of authority that is more traditionally masculine.<sup>11</sup> This dynamic contributes to persistent disparities in student evaluations, where women faculty are penalized not for a lack of competence, but for failing to align with gendered expectations of both warmth and authority.

Although being knowledgeable and demanding appears to motivate law students, the attribute of kindness is rarely mentioned in this context. Instead, for some students, kind and demanding qualities appear to be discordant, which can lead to unexpected results. For instance, despite clearly communicating my expectations in advance, some students have indicated that their scores on the first assignments were lower than expected, given my kind classroom demeanor. These comments have come after I provided my students with scoring rubrics in advance of submission, explicit directions, and the warning that I have high, but attainable standards. Despite this, some students have unfortunately mistaken my kindness as a sign that I have less expectations of them.

This disconnect between student perceptions and classroom expectations reflects a broader tension within legal education: the persistent undervaluing of relational teaching practices, even as national reform efforts call for them. Legal education reform has continued to advance since the influential *Carnegie Report*, which urged law schools to incorporate more practical and ethical development into the curriculum.<sup>12</sup> For example, more recently, the Institute for the Advancement of the American Legal System reports have emphasized the importance of relational competencies such as empathy, respect, and professionalism as essential to effective legal training.<sup>13</sup> Together, they critique the legal academy’s persistent focus on analytical reasoning at the expense of interpersonal connection, professional

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<sup>9</sup> *Id.* at 350.

<sup>10</sup> See generally, Daniel Storage, Tessa E.S. Charlesworth, Mahzarin R. Banaji & Andrei Cimpian, *Adults and Children Implicitly Associate Brilliance with Men More than Women*, 90 J. OF EXPERIMENTAL SOC. PSYCH. 1, 1 (2020) (hypothesizing that a gender brilliance stereotype holds women back from advancing in occupations that require high levels of intellectual ability).

<sup>11</sup> See Olga Khokhlova, Nishtha Lamba & Sameer Kishore, *Evaluating Student Evaluations: Evidence of Gender Bias Against Women in Higher Education Based on Perceived Learning and Instructor Personality*, 8 FRONTIERS EDUC. 1158132 (2023).

<sup>12</sup> WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 6 (2007).

<sup>13</sup> See Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* 31–32 (Oct. 28, 2020), <https://iaals.du.edu/publications/building-better-bar> [<https://perma.cc/YVT2-9RGE>]; Scott Bales, Rebecca Love Kourlis, Alli Gerkman, Logan Cornett, James Swearingen & Zachariah DeMeola, *Think Like a Client* 7 (Oct. 2019), [https://iaals.du.edu/sites/default/files/documents/publications/think\\_like\\_a\\_client.pdf](https://iaals.du.edu/sites/default/files/documents/publications/think_like_a_client.pdf) [<https://perma.cc/2SBC-APGE>].

identity, and inclusive values. This article responds to that gap by introducing the concept of affirmational engagement, a pedagogical approach I propose pairs high expectations with relational affirmation. In doing so, it offers a new framework for understanding how kindness can function as a rigorous and equity-promoting force in legal education.

This article begins by considering why kindness is mostly disregarded in legal education. Part I operationally defines the term “kindness,” examines the role of faculty gender demographics, and argues that it impacts law school customs and legal writing pedagogy. It explains how legal writing faculty predominantly continue to identify as female, and gendered stereotypes regarding kindness and positive attributes in different courses remain the same. It also places these dynamics in the broader context of institutional gender norms and the historical undervaluing of care-based pedagogies in the legal academy. Part II establishes the crucial role of kindness in legal education, particularly in legal writing pedagogy. This part contends that kindness, as manifested through constructive feedback, non-punitive accountability, and affirmational engagement, can renovate legal writing instruction into a site of intellectual and professional flourishing. In so doing, it challenges the traditional view that kindness is incompatible with academic rigor, instead arguing that kindness is an essential pedagogical approach that strengthens learning, accountability, and professional development. Drawing on insights from feminist theory, educational psychology, and scholarship on professional identity, this part urges legal educators to reimagine kindness as a serious teaching strategy. It provides a detailed analysis of the emotional dynamics in legal education by rejecting shame-based pedagogies and suggests reshaping legal education’s culture by promoting psychological safety and nurturing confidence. Finally, the article concludes with an explanation of why I now smile every time a student or faculty member refers to me as a “kind” professor.

### **Why Kindness is Marginalized in Legal Education**

An obvious first query in exploring why kindness is marginalized in legal education is considering how kindness is best defined beyond its etymological origin. When kindness is thought of as a behavior that benefits others at one’s own expense,<sup>14</sup> it is no surprise that its role in the law would be marginalized by lawyers who are zealously advocating for their clients and by law students who are learning to do the same. Law is a hard-hitting profession because of its adversarial and competitive nature. Individuals rarely seek legal counsel when things are going swimmingly in their lives; rather, they see lawyers when their problems require the expertise of someone who has been trained in the law. In such an environment, expressions of kindness are often viewed as distractions from the aggressive posturing often expected of lawyers.

When considered as a personality trait, however, psychologists would likely begin with a different operational definition of kindness; one that is not easy to state. Does kindness always have to come at one’s expense, or can kindness encompass a

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<sup>14</sup> Michael Vlerick, *Explaining Human Altruism*, 199 SYNTHÈSE 2395 (2021) (noting that from an evolutionary perspective, kindness at a cost is puzzling).

more reciprocal functionality? Psychologists themselves disagree about what makes up kindness as an attribute and what role it has in people's lives.<sup>15</sup> Some psychologists have viewed kindness as a form of self-kindness,<sup>16</sup> while others have seen it as a behavior that serves others at a cost to the self.<sup>17</sup>

The American Psychological Association defines kindness as a "benevolent and helpful action intentionally directed toward another person. Kindness is often considered to be motivated by the desire to help another, not to gain explicit reward or to avoid explicit punishment."<sup>18</sup> Psychologists have taken this foundational definition and conceptualized kindness as occurring in different variations. As a multifaceted, interpersonal trait, it has been described as having three aspects: benign tolerance, empathetic responsiveness, and principled proaction.<sup>19</sup> Benign tolerance refers to a kindness expressed in a live and let live manner; it is a permissive humanity.<sup>20</sup> Empathetic responsiveness is described as a higher form of kindness that involves more emotion and is more personal.<sup>21</sup> Finally, principled proaction focuses more on cognition than emotion. It involves honorable behavior towards others and is often considered altruistic.<sup>22</sup> Each of these forms of kindness could be relevant in legal education: benign tolerance might support student autonomy, empathetic responsiveness could enhance inclusive classroom climates, and principled proaction could align with the profession's ethical commitments.

Additional psychological studies have suggested that kindness has great individual benefits. For example, kindness can be considered an act of self-kindness because it has been linked to reduced stress and lower blood pressure.<sup>23</sup> Some psychologists also proclaim that kindness "promotes healthy social interactions"<sup>24</sup> and greater life satisfaction.<sup>25</sup> There is considerable support that kindness is a psychological value that promotes wellbeing.

It seems, therefore, that kindness can both serve others at one's expense and be a form of self-kindness. As an act of permissive humanity, it comes at no cost to self, but as a genuine empathetic response, kindness could involve a reaction that is detrimental to self. Additionally, as a principled proaction, kindness may be

<sup>15</sup> David V. Canter, Donna Youngs & Mira Yaneva, *Towards a Measure of Kindness: An Exploration of a Neglected Interpersonal Trait*, 106 PERSONALITY AND INDIVIDUAL DIFFERENCES 15 (2017).

<sup>16</sup> See Kristin D. Neff, *The Development and Validation of a Scale to Measure Self-Compassion*, 2 SELF AND IDENTITY 223, 225-29 (2003).

<sup>17</sup> Sonja Lyubomirsky, Kennon M. Sheldon & David Schkade, *Pursuing Happiness: The Architecture of Sustainable Change*, 9 REV. GEN. PSYCH. 111, 125 (2005).

<sup>18</sup> *APA Dictionary of Psychology*, AM. PSYCH. ASS'N, <https://dictionary.apa.org/kindness> [<https://perma.cc/UY45-UZHF>].

<sup>19</sup> Canter, *supra* note 15, at 17.

<sup>20</sup> *Id.*

<sup>21</sup> Canter, *supra* note 15, at 17.

<sup>22</sup> *Id.*

<sup>23</sup> Lee Rowland, *Kindness-Society's Golden Chain?*, PSYCHOLOGIST. 30, 31 (2018).

<sup>24</sup> Donna E. Youngs, Miroslava A. Yaneva & David V. Canter, *Development of a Measure of Kindness*, 42 CURRENT PSYCH. 5428, 5428 (2021).

<sup>25</sup> Kathryn E. Buchanan & Anat Bardi, *Acts of Kindness and Acts of Novelty Affect Life Satisfaction*, 150 J. SOC. PSYCH. 235, 235 (2010).

elevated to be a prosocial behavior that can encompass a form of self-kindness, even when it comes at a personal cost. For example, the kind act of a professor offering to provide additional review for a student outside of class will cost that professor time and effort but will also serve as a self-kindness because it will better develop the professor's teaching skills, and it will likely improve the classroom environment. Of course, it is also an act of kindness to the student because it helps the student better understand the material, while exhibiting that the professor cares about them and is deeply invested in their learning. The professor's commitment to education and student success becomes a virtuous cycle where the kind act helps the student, develops the professor's skills, and enriches the learning environment for everyone involved. This type of kindness resists narrow definitions of effective legal instruction that prioritize rigor over relationships, reminding us that learning flourishes in environments where students feel seen and supported.

Of course, these descriptions of kindness focus primarily on the individual acting, but it is important to recognize that the recipient also plays a crucial role in defining kindness. Receiving the act of kindness is essential, as intent alone, as is so often the case in legal application, is not enough: "it is the result, not the intention of kindness that counts."<sup>26</sup> Instead, recipients must receive some benefit, even if they are unaware of the kind act. Most often, when recipients are aware, they will be left with a good feeling that is often underestimated by the giver.<sup>27</sup> This underscores the idea that kindness, while initiated by the giver, carries a transformative effect on the recipient, even when it is not immediately obvious to the giver. In legal education, small acts such as offering thoughtful feedback, remembering a student's name, or showing grace during office hours can reshape a student's sense of belonging in a system where imposter syndrome<sup>28</sup> and marginalization are common. This ripple effect of kindness, where the recipient benefits even in subtle ways, highlights its enduring value, especially in professions where emotional support and well-being are central.<sup>29</sup> This recognition of kindness as relational, which is dependent not only on intent but also on reception, has particular significance in legal education, where power dynamics between professors and students can shape how acts of kindness are interpreted, welcomed, and much too frequently, even dismissed.

This positive feeling makes kindness especially valued in most helping professions. Helping vocations, certainly, are extremely varied; they include the "work of counselors, teachers, . . . , doctors, lawyers, grocery clerks, and customer

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<sup>26</sup> Austin B. Hake & Stephen G. Post, *Kindness: Definitions and a Pilot Study for the Development of a Kindness Scale in Healthcare*, PLOS ONE 1, 5 (2023).

<sup>27</sup> Amit Kumar & Nicholas Epley, *A Little Good Goes an Unexpectedly Long Way: Underestimating the Positive Impact of Kindness on Recipients*, 152 J. EXPERIMENTAL PSYCH. 236 (2022).

<sup>28</sup> See Sara L. Ochs, *Imposter Syndrome & The Law School Caste System*, 42 PACE L. REV. 373 (2022). Interestingly, this article focusses on the professor's feelings of being an imposter. In reality, both professors and students experience imposter syndrome; Kevin Cokley, Shannon McClain, Alicia Enciso & Mercedes Martinez, *An Examination of the Impact of Minority Status Stress and Imposter Feelings on the Mental Health of Diverse Ethnic Minority College Students*, 41(2) J. MULTICULTURAL COUNSELING & DEV. 101, 106 (2013).

<sup>29</sup> See generally Sheldon Cohen & Thomas A. Wills, *Stress, Social Support, and the Buffering Hypothesis*, 98 PSYCH. BULL. 310 (1985). While this article focuses on social support, it suggests that emotional support, which can be a form of kindness, can improve well-being.

service representatives.”<sup>30</sup> Kindness is traditionally valued in these occupations because most of these workers intend to make things better, rather than worse, for the people they serve.<sup>31</sup> This intention rings true for most teachers and lawyers. Yet, in legal education kindness often goes unrecognized or unrewarded. This is especially true when kindness is expressed through mentoring, availability, or emotional support, which are the very labors that are feminized and frequently invisible in formal evaluations of professional success. This is a striking contradiction: teachers are generally attracted to the profession for altruistic reasons,<sup>32</sup> while lawyers are attracted to the profession to be helpful and to pursue justice and fairness.<sup>33</sup> Still, the structures of legal academia can discourage those very instincts.

Because law professors are commonly both teachers and lawyers, the idea that kindness is not especially valued in legal education is puzzling until the history and demographics of the profession are considered. Unlike many other teaching positions, more law professors, priorly and presently, identify as male; professors identifying as female constituted roughly forty percent of law school faculties in 2024.<sup>34</sup> This is less than a one percent increase from the previous year.<sup>35</sup> The same slow drift is occurring in law school administrations. Most law schools are led by male deans, with 42 percent of all law school deans identifying as female in 2024.<sup>36</sup> In 2020, one in five law schools had never had a female dean.<sup>37</sup>

Although these numbers suggest that the gender gap is shrinking in legal education, individuals who identify as female consistently hold less prestigious jobs within the legal academy. For example, ever since the 1990s, “women faculty have been 2-3 times more likely than men faculty to occupy non-tenure track and non-

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<sup>30</sup> ANNE M. GEROSKI, *SKILLS FOR HELPING PROFESSIONALS* 11 (2016).

<sup>31</sup> See generally Martin Smith, *Wounding Healers. Killing with Kindness on the Road to Hell*, 33 J. SOC. WORK PRAC. 109 (2019) (considering the dark side of altruism and unintended consequences).

<sup>32</sup> Ab Rahim Baker, Shamsiah Mohamed, Asmawati Suhid & Ramlah Hamzah, *So You Want to Be a Teacher: What Are Your Reasons?*, 7 INT’L EDUC. STUD. 155, 155 (2014) (finding that altruistic motivation seemed more prevalent than intrinsic motivation and extrinsic motivation).

<sup>33</sup> *Profile of the Legal Profession 2024: Legal Education*, AMERICAN BAR ASSOCIATION <https://www.americanbar.org/news/profile-legal-profession/legal-education/> [<https://perma.cc/BK2U-AN7T>] (also listing a path to political careers, government and public service work, a passion for that type of work, and wanting to promote social change as reasons for wanting to enter the legal profession).

<sup>34</sup> *Law School Faculty Demographics* (2024), ENJURIS, <https://www.enjuris.com/students/law-school-faculty-demographics-2024/> [<https://perma.cc/M7YN-2F8M>] (“[I]n 2024, 55.71 percent of law school professors identified as male, while 43.53 percent identified as female. Additionally, 0.08 percent identified as ‘another gender,’ and 0.59 percent chose not to disclose.”).

<sup>35</sup> *Id.* In 2023, there were 11,820 faculty members who identified as female, and in 2024 the number had increased to 12,171.

<sup>36</sup> *Women in the Legal Profession* (2024), AMERICAN BAR ASSOCIATION, <https://www.americanbar.org/news/profile-legal-profession/women/> [<https://perma.cc/P892-5WC7>]

<sup>37</sup> Elizabeth D. Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948-2021*, 15 J. LEGAL ANALYSIS 48, 49 (2023).

research positions. A similar pattern follows for deans but is delayed by roughly a decade. Since the 2000s, female deans have been more than 2 times as likely as male deans to occupy that position on an interim basis.”<sup>38</sup> Additionally, the top fourteen law schools as ranked by U.S. News and World Reports, account that only two out of five professors identify as female.<sup>39</sup> Although statistically the gender divide significantly shrunk in law school faculty, the increase in faculty spots held by females can mostly be attributed to lower paying and lower status positions. This means that despite sluggish and shiftily changing demographics, legal education is still predominately led by men.

The idea that law school and law school topics may be gendered could also help to explain why kindness is not prized in legal education. A law school topic is considered gendered when (1) it is historically taught by a particular gender, (2) its employment terms exhibit societal attitudes regarding prestige and power, and (3) it requires skills that are customarily thought to predominately belong to one gender.<sup>40</sup> First, some doctrinal subjects are gendered male because they have traditionally been taught by men and are associated with analytical reasoning and technical expertise. For example, Federal Taxation is a course that could be labeled as being gendered male because it has traditionally been taught by men. A review of the top tax scholars at the beginning of 2024 reveals that the top 50 are predominately male law professors, with a female tax scholar not appearing on the list until the number nine spot.<sup>41</sup> In contrast, a review of the most recent Association of Legal Writing Directors/Legal Writing Institute Survey suggests that legal writing is gendered female because it is disproportionately taught by women in lower-status, non-tenure track jobs: in 2023-2024, 78.6 percent of the 295 legal writing professors who responded to the survey identified as female<sup>42</sup> and only 18.2 percent of the 172 law schools that responded provided legal writing faculty with tenured or traditional tenure-track status.<sup>43</sup>

Second, societal attitudes regarding prestige and power are reflected in employment terms associated with various teaching roles in legal education. This dynamic reinforces gender hierarchies that prioritize traditionally masculine-coded subjects, while simultaneously marginalizing those predominantly taught by women. One way to understand how these attitudes result in disparate employment

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<sup>38</sup> *Id.* at 70.

<sup>39</sup> Laura Spitalniak, *Top law schools have been slow to add women faculty members, research finds*, HIGHER ED DIVE (Oct. 11, 2022), <https://www.highereddive.com/news/top-law-schools-have-been-slow-to-add-women-faculty-members-research-finds/632086/> [<https://perma.cc/S64Y-2YR6>].

<sup>40</sup> See Steven K. Homer, *Hierarchies of Elitism and Gender: The Bluebook and the ALWD Guide*, 41 PACE L. REV. 1, 34 (2020).

<sup>41</sup> Paul Caron, *2024 Tax Prof Rankings: Google Scholar H-Index All*, TAXPROF BLOG (Jan. 23, 2024), [https://taxprof.typepad.com/taxprof\\_blog/2024/01/2024-tax-prof-rankings-google-scholar-h-index-all.html](https://taxprof.typepad.com/taxprof_blog/2024/01/2024-tax-prof-rankings-google-scholar-h-index-all.html) [<https://perma.cc/R5X9-MYCL>] (noting that of the top 50 tax scholars on this list, only 12 are women).

<sup>42</sup> *ALWD/LWI 2023-2024 Report of the Individual Survey*, ASS'N LEGAL WRITING DIRS. & LEGAL WRITING INST. 112 (2024), <https://www.alwd.org/images/resources/2023-2024-ALWD-and-LWI-Individual-Survey-report-FINAL.pdf> [<https://perma.cc/73H5-GCX6>].

<sup>43</sup> *Id.* at iv. Additionally, 21.9% schools reported that their legal writing professors were in fulltime, short positions and 12.3% reported that their legal writing professors were in fulltime long-term positions without 405(c) status that provides a presumptively renewable contract with of least a five-year duration.

terms is through the concept of gender ideology. This concept can be used in legal education to explain how cultural beliefs about masculine and feminine traits influence the structure, values, and hierarchies within the legal academy. Gender ideology, in this context, refers to what it means in a particular culture to be male or female. It “shape[s] the public and private social space shared between men and women.”<sup>44</sup> It is a complex idea that goes beyond the patriarchal notion of gender differences being rooted in biological differences and placing women in an inferior position.<sup>45</sup> Instead, it considers how gender roles have been defined by changing economic structures in society and how society has treated genders unequally.<sup>46</sup> In the legal academy, this manifested itself in employment terms that perpetuate prestige and power disparities.

Drawing on Judith Lorber’s work on gender and social institutions, we can understand how law schools and law school topics are gendered, with gender roles impacting compensation structures and faculty assignments.<sup>47</sup> Lorber’s framework suggests that institutions reflect gendered division of labor, gendered social control,<sup>48</sup> and gendered expectations.<sup>49</sup> For example, law schools that pay their faculty who identify as male more than their faculty who identify as female, have at least one indicator that they are gendered male. Professors identifying as male are also far more likely than professors identifying as female to earn at least \$150,000.<sup>50</sup> This is partially accounted for by the rank of the law school where the professors teach, with 86% earning over \$150,000 if they teach at a top 20 U.S. News and World Report ranked school.<sup>51</sup> The number of professors identifying as female approaches fifty percent at schools ranked higher than 51.<sup>52</sup>

A lack of comparable professional titles and office space for legal writing faculty further contributes to a gender ideology that reinforces the hierarchical and gendered nature of the legal academy. Although most law schools now provide legal writing faculty with the title of “professor” the designation is often accompanied

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<sup>44</sup> Larry Catá Backer, *Emasculated Men, Effeminate Law in the United States, Zimbabwe and Malaysia*, 17 YALE J. OF L. & FEMINISM 1, 50 (2005) (explaining that gender ideology can be a form of patriarchy).

<sup>45</sup> S.U. Philips, *Gender Ideology: Cross-Cultural Aspects*, INT’L ENCYCLOPEDIA SOC. AND BEHAV. SCI’S. 6016, 6016-20 (2001).

<sup>46</sup> Danice Lynn Langdon & Roger Klomegah, *Gender Wage Gap and Its Associated Factors: An Examination of Traditional Gender Ideology, Education, and Occupation*, 39 INT’L REV. MOD. SOCIO. 173, 177 (2013).

<sup>47</sup> See Andrea Giampetro-Meyer, *Toward Gender Equality: The Promise of Paradoxes of Gender to Promote Structural Change*, 1 WM. & MARY J. WOMEN AND L. 131, 132–33 (1994) (conducting an interdisciplinary review of Lorber’s PARADOXES OF GENDER (1994)).

<sup>48</sup> Linda Sheryl Greene, *Mirror, Mirror on the Wall— Gender, Olympic Competition and Persistence of the Feminine Ideal*, 31 WIS. J. OF L., GENDER & SOC’Y. 57, 63 (citing JUDITH LORBER, PARADOXES OF GENDER (1994)).

<sup>49</sup> See JUDITH LORBER, PARADOXES OF GENDER 292 (1994) (questioning basic assumptions about gender and arguing that gendering is done to produce an inequality of genders).

<sup>50</sup> Christopher J. Ryan & Meghan Dawe, *Mind the Gap: Gender Pay Disparities in the Legal Academy*, 34 GEO. J. LEGAL ETHICS 567, 609 (2021).

<sup>51</sup> *Id.* at 601.

<sup>52</sup> Katz et al., *supra* note 37, at 62.

with a distinction that sets them apart from “professors of law.” Instead, they are given the title of “professor of legal writing” or “professor of practice,” which subtly, yet meaningfully sets them apart from professors of doctrinal classes who are simply referred to as “professors of law” and further diminishes their position by providing a less prestigious title.<sup>53</sup> These nuanced title variations buttress hierarchical divisions within the faculty, and disproportionately affect women who make up the considerable majority of the legal writing faculty. This gender disparity is additionally compounded by the physical environment: legal writing faculty are sometimes placed in offices that are less desirable than others,<sup>54</sup> with the justification that the amount of student conferencing done necessitates the need for different and separated space. In reality, such arrangements both reflect and perpetuate the devaluation of feminized labor efforts in the legal academy.

Perhaps the valuation of scholarship in the legal academy is the greatest indicator that legal education is deeply rooted in gender ideology that takes on a traditionally masculine approach. Scholarship has been traditionally valued over teaching in law schools because it is supposedly more intellectually demanding than teaching. Not surprisingly, scholarship is also more frequently associated with male professors, an image that “has been passed down from the original monastic figures who preceded the modern university.”<sup>55</sup> This alignment of scholarship with masculinity enhances its prestige, reinforcing the perception that intellectual rigor resides primarily in abstract, solitary work rather than in the interactive, communicative labor of teaching. Teaching “is often gendered, and then devalued, within the legal academy, which has a particularly negative effect on those who teach legal writing because of its intensely student-oriented and labor-intensive teaching.”<sup>56</sup> Because the art of teaching has often been characterized as women’s work in society, legal writing faculty in particular are relegated to the non-tenure-track ‘pink ghetto,’ a status that stems from the intensive one-on-one student contact their work requires and that is less common in other courses.<sup>57</sup> Again, this disparity in employment terms reflects broader societal attitudes about prestige and power, in which feminized labor is consistently undervalued.

Third, the intellectual labor associated with different law school courses is similarly stratified along gender lines, further developing the gendering of law school courses. For example, male-gendered courses are regularly taught by professors who identify as male because they require the often gendered skill of analysis, which in turn carries higher esteem because the courses are thought to

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<sup>53</sup> See ALWD/LWI 2023-2024 Report of the Individual Survey, *supra* note 42, at vi-ix (listing qualifications attached to titles).

<sup>54</sup> L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 Utah L. Rev. 837, 850 (2022). Additionally, the 2021-2022 ALWD/LWI Institutional Survey, which was the last survey to collect information on offices, revealed that faculty with lesser status and titles were not given comparable offices to their peers with more prestigious titles and status; *ALWD/LWI 2021-2022 Report of the Institutional Survey*, ASS’N LEGAL WRITING DIRS. & LEGAL WRITING INST. (2022), <https://www.lwionline.org/sites/default/files/2025-03/2021-22%20Institutional%20Survey%20Report.FINAL%20June%202023.pdf> [<https://perma.cc/GY24-P64C>].

<sup>55</sup> Paula A. Monopoli, *Gender and the Crisis in Legal Education: Remaking the Academy in Our Image*, 2012 MICH. ST. L. REV. 1745, 1759 (2012).

<sup>56</sup> Homer, *supra* note 40, at 38–39.

<sup>57</sup> *Id.* at 39.

necessitate more challenging intellectual work.<sup>58</sup> Legal writing courses are on the other end of the spectrum; they are thought of as softer skill courses that are less coveted to teach.<sup>59</sup> They are less attractive and less valued in the legal academy because of the student contact hours they require, their supposed lack of legal doctrine,<sup>60</sup> and the fact that they are prevalently taught by women.<sup>61</sup> The high level of student interaction they demand routinely call for traits that are traditionally coded as feminine—such as being nurturing, empathetic, and of course, kind<sup>62</sup>—which further contributes to their marginalization in the legal academy. This suggests that kindness, as a core but often invisible pedagogical value in legal writing courses, is routinely overlooked or trivialized, reinforcing the perception that it holds little intellectual or institutional merit.

Interestingly, a doctrinal Constitutional Law course will still be deemed more intellectually demanding than a Legal Writing course, even when the Legal Writing course uses Constitutional Law as a substantive vehicle to teach skills. For example, I traditionally use difficult First Amendment school speech concepts to teach appellate advocacy, however my doing so does not elevate the perception of the rigor of my Legal Writing course within the academy. This is likely due to the misunderstanding that “legal writing, in particular, is viewed as involving the mere teaching of commas and proper spelling,”<sup>63</sup> when in reality, it involves the explicit

<sup>58</sup> See generally Anaïs Llorens, Athina Tzovara, Ludovic Bellier, Ilina Bhaya-Grossman, Aurélie Bidet-Caulet, William K. Chang, Zachariah R. Cross, Rosa Dominguez-Faus, Adeen Flinker, Yvonne Fonken, Mark A. Gorenstein, Chris Holdgraf, Colin W. Hoy, Maria V. Ivanova, Richard T. Jimenez, Soyeon Jun, Julia W.Y. Kam, Celeste Kidd, Enitan Marcelle, Deborah Marciano, Stephanie Martin, Nicholas E. Myers, Karita Ojala, Anat Perry, Pedro Pinheiro-Chagas, Stephanie K. Riès, Ignacio Saez, Ivan Skelin, Katarina Slama, Brooke Staveland, Danielle S. Bassett, Elizabeth A. Buffalo, Adrienne L. Fairhall, Nancy J. Kopell, Laura J. Kray, Jack J. Lin, Anna C. Nobre, Dylan Riley, Anne-Kristin Solbakk, Joni D. Wallis, Xiao-Jing Wang, Shlomit Yuval-Greenberg, Sabine Kastner, Robert T. Knight & Nina F. Dronkers, *Gender Bias in Academia: A Lifetime Problem That Needs Solutions*, 109 NEURON 2047, 2060 (2021) (both male and female students attribute certain traits to male and female professors despite the same subject matter being taught from either a male or female professor).

<sup>59</sup> Homer, *supra* note 40, at 33 (noting that Immigration Law and Poverty Law are gendered female as being softer courses, and that Legal Writing courses are less prestigious).

<sup>60</sup> The argument that Legal Writing courses do not teach doctrine is flawed. Legal Writing courses explicitly teach foundational doctrinal concepts such as *stare decisis*, precedent, legal rhetoric, statutory interpretation, and procedure.

<sup>61</sup> Amanda L. Stephens & Sean M. Viña, *On Women Professors Who Teach Legal Writing: Addressing Stigma and Women’s Health*, 48 VT. L. REV. 237, 238 (2024) (noting that nearly eighty percent of professors teaching legal writing are women).

<sup>62</sup> See Xiaohui Zhai, Shazia Rehman, Abdullah Addas, Qingke Liu, Erum Rehman & Muhammad Nasir Khan, *Emotional Labor and Empathic Concern as Predictors of Exhaustion and Disengagement in College Teachers*, 15 SCI. REP. 1, 12 (2025) (suggesting that “female teachers may be more socially conditioned to navigate emotional demands aligning with societal expectations of nurturance and relational labor.”).

<sup>63</sup> Larry Cunningham, *Dividing Law School Faculties into Academic Departments: A Potential Solution to the Gendered Doctrinal/Skills Hierarchy in Legal Education*, 67 VILL. L. REV. 679, 696–97 (2022). The author goes on to explain that this is a misconception and that teaching legal writing is rigorous and demanding work.

teaching of legal analysis and persuasion. In addition to teaching rule-based and policy-based analysis that is so often stressed in substantive law classes, legal writing classes also teach analogical reasoning skills. This misunderstanding not only undercuts the intellectual labor involved in legal writing but also diminishes the professional worth of the kindness, patience, and individualized attention it demands.

Kindness appears to be marginalized in legal education not only because it lacks value, but because it is undervalued within a system that prizes traits aligned with traditional masculinity—competitiveness, detachment, and intellectual abstraction—over those associated with traditional femininity, such as empathy, collaboration, and care. Legal education, shaped by long-standing gender ideologies, has institutionalized a hierarchy that rewards solitary scholarship over student-centered teaching, and that privileges analytical rigor over relational intelligence. Traits that underlie kindness, such as emotional awareness, responsiveness, and concern for others, are thus relegated to the margins, especially when embodied in feminized roles such as legal writing faculty. By viewing kindness as soft, self-sacrificing, or lacking in intellectual seriousness, the legal academy overlooks the transformative power it holds for fostering inclusive learning environments and supporting student development. Until the values of care and relational labor are given equal standing to more traditionally masculine-coded academic pursuits, kindness will remain a sidelined virtue in legal education, appreciated in theory but rarely institutionalized in practice.

### **The Crucial Role of Kindness in Legal Education**

Today's law students are notably in need of expressions of kindness from their professors. When law students first begin their legal education, their initial enthusiasm is quickly morphed into a sense of self-doubt as they are shepherded into a highly competitive environment.<sup>64</sup> Throughout the remainder of their education, this self-doubt evolves into feelings of being overwhelmed; first as they tackle extracurricular activities, and then again as they look for employment and prepare to study for the bar exam.<sup>65</sup> As evidenced by several six-word stories penned by law students, including “Lost: sanity. Last seen: before orientation” and “Scared 1Ls, stressed 2Ls, Impatient 3Ls,” legal education clearly takes a toll on students' mental health.<sup>66</sup> For many, it erodes confidence and replaces it with deep insecurities and nagging doubts about their career choices.

One of the primary sources of the impact on law students' mental health is the intense pressure surrounding academic performance. As students strive to maintain their footing in an already demanding environment, the weight of grades becomes an ever-present source of anxiety. Law school cultures undoubtedly vary from

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<sup>64</sup> Raashi Shama, *Law Student Mental Health: An Open Dialogue*, 67 BOS. B. J. 13, 13 (2023).

<sup>65</sup> *Id.*

<sup>66</sup> Mary Lynn Dunnewold, *Handling Law School Stress Well*, A.B.A. LAW STUDENT DIVISION (Dec. 1, 2011), [https://www.americanbar.org/groups/law\\_students/resources/student-lawyer/personal-financial/handling-law-school-stress-well/](https://www.americanbar.org/groups/law_students/resources/student-lawyer/personal-financial/handling-law-school-stress-well/) [<https://perma.cc/UMA8-YY4Q>]. Other six-word stories touching on the stress of law school include “Happy people don't study hard enough” and “My wife should sue for damages.”

school to school, yet one constant remains: grades matter because they determine access to key opportunities, such as law review and competitive job placements.<sup>67</sup> This message is reiterated to law students in numerous ways, including faculty normalization scales, class rank, and scholarship opportunities. This emphasis on grades heightens students' anxiety and narrows their perception of success, often reducing their self-worth to a number or a rank.

Unfortunately, faculty actions can subtly reinforce this message, even when done unintentionally. For example, having singular summative assessments creates a tremendous high-stakes situation, where one exam determines an entire course grade. This amplifies the importance of grades and contributes to an already stressful environment which can undermine students' well-being. Similarly, "faculty delighting in sharing stories of typos and grammatical errors that cost clients millions of dollars and former lawyers their licenses"<sup>68</sup> and making casual, in-class, unfavorable judgments about other lawyers' writings or actions, can cause students to doubt themselves and worry about their abilities as professionals.<sup>69</sup> Although these stories are meant to capture students' interests and to provide them with cautionary tales, they can cause students to fret about their own shortcomings as writers and as law students. Considered together, these actions can further erode students' confidence and exacerbate the anxiety they already feel about their place in the law school and the vocation of law.

The stress and anxiety law students experience is reflected in the alarming statistics of law student mental health. Research studies in the last two decades have regularly shown that law students experience higher rates of mental distress than similarly situated students of other disciplines, including medicine.<sup>70</sup> Over fifty percent of all law students experience very high levels of stress, as defined by the Law School Student Stress Module<sup>71</sup> as a score of six or seven on a seven-point Likert scale.<sup>72</sup> The 2022 Bloomberg Law Survey suggests that these LSSSE's number may be a bit low, finding that "over 75% of student respondents reported increased anxiety because of law school related issues, and over 50% reported experiencing depression."<sup>73</sup> These studies suggest that stress and anxiety are not just

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<sup>67</sup> Chelsea M. Baldwin, *Bad Therapy: Conceptualizing the Teaching of "Thinking Like a Lawyer" as Cognitive Behavioral Therapy*, 55 ST. MARY'S L.J. 917, 959 (2024).

<sup>68</sup> *Id.* at 963.

<sup>69</sup> *Id.*

<sup>70</sup> Baldwin, *supra* note 67, at 921.

<sup>71</sup> Law School Survey of Student Engagement, *How a Decade of Debt Changed the Law School Experience*, LSSSE 17 (2015), [LSSSE-annual-report-2015-update-final-revised-web.pdf](https://perma.cc/28EH-JGLA) [https://perma.cc/28EH-JGLA]. LSSSE has been administering surveys to law students since 2004 and tracking law student stress since 2015.

<sup>72</sup> Jakki Petzold, *Law Student Stress and Anxiety*, LSSSE Blog (May 16, 2022, 10:00 AM), <https://web.archive.org/web/20220808104357/https://lssse.indiana.edu/blog/law-student-stress-and-anxiety/> [https://perma.cc/V4BR-G3AG]. The LSSSE Module is particularly telling because it pinpoints and separates law school stress from other stressors, such as finances.

<sup>73</sup> Jessica R. Blaemire, *Analysis: Well-Being in Law School—Law Students Aren't OK*, BLOOMBERG LAW (Feb. 3, 2023), <https://news.bloomberglaw.com/banking-law/analysis-well-being-in-law-school-law-students-arent-ok> [https://perma.cc/4TLE-3LY9].

peripheral reactions to the current state of legal instruction, but that depression has also become a much too common feature of the law school experience.

Moreover, the 2021 Survey of Law Student Well-being saw the number of students considering suicide more than double since 2014.<sup>74</sup> While alcohol consumption has declined, the use of marijuana and psychedelic drugs has increased,<sup>75</sup> signaling shifts in how law students attempt to cope with the stress of legal education. Research studies and academic scholars attribute these issues to the competitive grade-focused law school environment and law school cultures that unintentionally discourage help-seeking behaviors.<sup>76</sup> This data suggests that the emotional toll of legal education is not an incidental byproduct; rather, it is a systemic issue, shaped by academic structures and institutional norms that at least partially define the law school experience. In light of these challenges, reevaluating structural aspects and pedagogical approaches within the classroom becomes essential for improving the law school experience.

As part of this broader structural revamping, reconsidering the role of kindness in law school pedagogy is especially important. Although traditional law school teaching techniques, such as the Socratic Method, may emphasize and reward traits associated with masculinity and sideline more feminine qualities like empathy and patience, kindness is not a weakness, nor is it incompatible with academic rigor. On the contrary, it is an essential pedagogical stance that can strengthen student learning. When done deliberately, kindness is a teaching tool that enhances learning because it fosters academic success, and creates a welcoming climate where students feel comfortable making contributions and taking risks.

While kindness could be valuable in every law school course, it is especially important in legal writing instruction. For students, becoming strong legal writers entails boldness, humility, and vulnerability<sup>77</sup> because it requires them to make mistakes and accept critiques.<sup>78</sup> First-year law students, in particular, must be receptive to learning legal writing, a topic that may simultaneously feel both familiar and foreign to them. Many law students come in as strong writers who were previously praised for their work, only to be told by their law professors that their writing practices will not earn them high marks in law school. Accustomed to writing in order to reach a certain page limit, and saving the conclusion to the end, they are now told that they need to write more concisely and lead with their conclusion. Their first attempt at doing so requires them to humbly consider embracing a more technical writing style,<sup>79</sup> while at the same time showcasing the analytical thought process they are just learning. To do so requires courage and openness that can be difficult for students to marshal in the competitive law school

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<sup>74</sup> David Jaffe, Katherine M. Bender & Jerome M. Organ, “*It Is Okay to Not Be Okay*”: *The 2021 Survey of Law Student Well-Being*, 60 UNIV. LOUISVILLE L. REV. 441, 458 (2022).

<sup>75</sup> *Id.* at 460. As noted by the authors, the decrease in drinking and simultaneous increase in marijuana use may be attributable to the legalization of recreational use in many states.

<sup>76</sup> *Id.* at 470. See generally Aric Short, *Infusing Leadership Competencies into 1L Professional Identity Formation*, 62 SANTA CLARA L. REV. 113 (2022).

<sup>77</sup> Olivia Ruschill, *Creative, Vulnerable and Bold: Learning the Art of Good Legal Writing*, 91 KAN. B.J. 14, 14 (2022).

<sup>78</sup> *Id.* at 15.

<sup>79</sup> Michael J. Higdon, *The Legal Reader: An Exposé*, 43 N.M. L. REV. 77, 80-82 (2013). Professor Higdon defines technical writing as “any communication concerning a specialized area that is directed at a particular audience for a discrete purpose.” *Id.* at 80.

environment.

For professors, teaching students to become strong legal writers requires kindness demonstrated through honesty, empathy, and sincerity. Professors must be honest enough to identify flaws, empathetic enough to understand the emotional weight of critiques and grades, and sincere enough in their belief that all students can improve and grow as legal writers.<sup>80</sup> In this context, kindness is not ancillary to learning; rather, it is crucial in developing the confidence and precision that legal writing demands.

The expression of kindness when teaching legal writing in an honest, empathetic, and sincere manner takes on specific and deliberate forms. It is expressed by providing honest feedback, insisting on accountability without resorting to shaming, and voicing an authentic confidence in law students' abilities. These pedagogically rigorous practices are often undervalued in comparison to the traditional and more masculine norms of legal education that emphasize detachment and dominance through aggressive questioning.<sup>81</sup> Yet each of these practices demands mastery and precision. Reframing them as essential teaching strategies rather than signs of softness allows professors to broaden their understanding of what effective legal pedagogy can look like.

Cultivating a learning environment where honest feedback can thrive requires a shared ethic of kindness that is not rooted in politeness or avoidance but instead is a practice of mutual respect and intellectual generosity. For professors, this means offering direct and thoughtful critique that genuinely respects students' efforts while gently nudging them toward greater clarity and academic rigor. For students, kindness may take on the form of openness: the willingness to receive feedback not as a personal affront, but as a serious investment in their growth. When feedback is delivered and received as an act of care rather than as a confrontation or condemnation, the professor/student relationship is strengthened, and legal writing instruction is greatly enhanced.

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<sup>80</sup> Although a full exploration of the issue is beyond the scope of this paper, some law professors are still debating whether writing can be taught. Several social science studies confirm that it can. See Emily S. Darowski, Elizabeth Helder & Nikole D. Patson, *Explicit Writing Instruction in Synthesis: Combining In-Class Discussion and an Online Tutorial*, 49 *TEACHING OF PSYCH.* 57 (2022); Susan De La Paz & Mark K. Felton, *Reading and Writing from Multiple Source Documents in History: Effects of Strategy Instruction with Low to Average High School Writers*, 35 *CONTEMP. EDUC. PSYCH.* 174 (2010); STEVE GRAHAM & DOLORES PERIN, *WRITING NEXT: EFFECTIVE STRATEGIES TO IMPROVE WRITING OF ADOLESCENTS IN MIDDLE AND HIGH SCHOOLS 4–5* (2007). Additional articles focus on making improvements specifically in legal writing. See also Florian Weber, Thiemo Wambsganss & Matthias Söllner, *Enhancing Legal Writing Skills: The Impact of Formative Feedback in a Hybrid Intelligence Learning Environment*, 56 *BRIT. J. EDUC. TECH.* 650, 650–51 (2024); Jeremy Francis, Daphne O'Regan, Ryan Black, *Designing Success: Motivating and Measuring Successful 1L Student Engagement in an Optional Proficiency-Based Program Teaching Grammar and Punctuation*, 21 *J. OF LEGAL WRITING INST.* 129, 183 (2023).

<sup>81</sup> The Socratic Method is often criticized as being unnecessarily harsh and having a disproportionately stifling effect on female students' voices. See Michael P. Harvey-Broughton II, *Ending the Chill of Cold Calling: A Multimodal Solution to the Pitfalls of the Socratic Method*, 16 *DREXEL L. REV.* 359, 379 (2024).

### Providing Constructive Feedback

First, providing honest feedback, both inside and outside of the classroom, is an intimidating but necessary act of kindness when teaching legal writing. Interestingly, this process can be intimidating for both the student receiving feedback and the professor providing it. Legal writing can be especially nerve-racking for students because it demands precision, clarity, and a command of legal reasoning that many students are still developing when they receive their feedback. When professors provide honest feedback, they highlight weaknesses and areas for improvement, which can be discouraging to students who have invested significant time and effort into their work. This direct critique often feels deeply personal, exposes students' vulnerabilities, and causes them to wonder if their work is inadequate or even failing.<sup>82</sup> In turn, this provokes anxiety, self-doubt, and even resistance to further instruction.

Additionally, students who are accustomed to receiving positive feedback on their writing can feel affronted by the suggestions that are offered.<sup>83</sup> They may misinterpret the feedback that is given as a judgment on their potential as lawyers. This pressure can make receiving feedback feel overwhelming rather than constructive, increasing the risk that students will become defensive or disengaged.

For professors, it requires direct engagement with students' weaknesses, which can feel uncomfortable, especially when students already feel vulnerable. Some professors worry that straight-talking critiques will prompt defensive reactions, which can result in poor student evaluations, an uncomfortable classroom dynamic, or, worst of all, damaged students' confidence.

Although some may dismiss faculty members' concerns for receiving poor student evaluations, emerging social science research suggests that negative feedback can have a profound impact on professors' mental health and career trajectories. Anonymous student evaluations, in particular, can contain hurtful and defamatory comments that can cause psychological harm.<sup>84</sup> They can lead faculty members not just to stress, but to extreme distress, with some professors choosing to resign rather than be subjected to further negative comments.<sup>85</sup> Professors have even reported severe acute and chronic illnesses that they attribute to the trauma of receiving negative student evaluations.<sup>86</sup> These effects can be magnified in courses where students are more likely to experience emotional responses to feedback that can distort their evaluations.

Consequentially, for professors who teach legal writing, negative evaluations and student comments may be even more severe. Law students have traditionally

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<sup>82</sup> See generally Felice J. Batlan, Kelly Hradsky, Kristen Jaschke, LaVonne Meyer & Jill Roberts, *Not Our Mother's Law School?: A Third-Wave Feminist Study of Women's Experiences in Law School*, 39 U. BALT. L.F. 124, 137 (2009) (providing anecdotal support that feedback was internalized and viewed as an indicator of not being smart enough to be in law school).

<sup>83</sup> Lauren E. Sancken, *Grade Expectations: Helping Students Process Feedback Better*, 37 SECOND DRAFT 1 (2024) (noting that as a law student, the author only saw "the message 'you aren't good at this' in red glaring print" and could not focus on the feedback).

<sup>84</sup> Richard Laekeman, Rosanne Coutts, Marie Hutchinson, Debbie Massey, Dima Nasrawi, Jann Fielden & Megan Lee, *Stress, Distress, Disorder and Coping: The Impact of Anonymous Student Evaluation of Teaching on the Health of Higher Education Teachers*, 47 ASSESSMENT AND EVALUATION HIGHER EDUC. 1489 (2022).

<sup>85</sup> *Id.* at 1494.

<sup>86</sup> *Id.* at 1495.

rated legal writing courses lower than other doctrinal courses,<sup>87</sup> likely because of the amount of feedback they receive in relation to other courses. Additionally, comments left in evaluations seem to be especially hurtful, leaving legal writing professors to wonder if students are taking out their frustrations on what they deem to be safe targets.<sup>88</sup> This dynamic reflects a deeper tension in legal education, where the emotional strain of teaching is often unnoticed, even as it shapes how professors openly take on students' development.

As a result, some professors may hesitate before providing critical feedback, not because they are indifferent, but because they are protecting themselves from unkind comments. When a faculty member believes that their well-being and career are at risk, they may soften their critique to such a degree that they risk academic honesty.<sup>89</sup> Ultimately, this increases the invisible and emotional toll on faculty which undermines the quality of education for students.

In legal writing, honest feedback must strike a delicate balance between pedagogical judgement and emotional labor because the stakes of clarity, logic, and precision are paramount, as is the student/professor relationship. It must be rigorous enough to foster growth, but delivered in a way that students can hear and ultimately use. Going beyond feedback on writing assignments, this challenge is intensified by the relational dynamics inside of the classroom; professors may fear being perceived as too harsh, too critical, or even biased, a fear that can result in adapting to a less than rigorous approach. Educational research confirms that verbal feedback delivered during classroom interactions can significantly influence student learning and motivation, but when perceived as overly critical, it can cause defensiveness or disengagement.<sup>90</sup> Giving precise, honest feedback in the classroom setting with clarity, kindness, and care requires emotional labor, educational skill, and a willingness to risk temporary discomfort in the service of long-term student development.

#### Insisting on Accountability Without Shaming

Next, to grow as legal thinkers, students must be held accountable for the exactitude the legal profession demands. Yet accountability, particularly in the context of legal education, ought not to be motivated through shaming. Shame-based pedagogies imply more than just a lack of understanding or correctable shortcoming in skill; rather, they suggest that a student's failure indicates a personal deficit in their character or identity.<sup>91</sup> This distinction is significant. When professors conflate critique with condemnation, they risk damaging the learning

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<sup>87</sup> Melissa Marlow-Shafer, *Student Evaluation of Teacher Performance and the "Legal Writing Pathology": Diagnosis Confirmed*, 5 CUNY L. REV. 115, 115-16 (2002).

<sup>88</sup> *Id.* at 130-33.

<sup>89</sup> See Judith D. Fischer, *The Use and Effects of Student Ratings in Legal Writing Courses: A Plea for Holistic Evaluation of Teaching*, 10 J. LEGAL WRITING INST. 111, 149 (2004).

<sup>90</sup> John Hattie & Helen Timperley, *The Power of Feedback*, 77 REV. EDUC. RSCH. 81, 86-90 (2007).

<sup>91</sup> Alessandra Fussi, *Aristotle on Shame*, 35 ANCIENT PHIL. 113, 114 (2015) (asserting that shame results from an incongruence between self-expectations of who we want to be and being viewed as less than that, or perhaps even as defective).

process they aim to cultivate. In contrast, accountability rooted in kindness communicates high expectations while reinforcing the students' value and potential.

It is not surprising that some legal educators, despite the long-standing call for the humanization of legal education,<sup>92</sup> will at times still rely on shaming as a didactic tool. Most, if not all, law professors went to law school in an age where shaming was likely more acceptable. They were probably educated during a time when aggressive cold calling was, and unfortunately perhaps still is, normalized: "The dominant doctrinal courses in the law school curriculum focus on reading curated excerpts of cases followed by a Socratic discourse focused on the facts, reasoning, and holding of each case."<sup>93</sup> These experiences likely influence their teaching styles, and in some cases, can perpetuate a cycle that can result in discomfort, fear, and even shame, for students in the classroom.

Additionally, most law professors are licensed lawyers too, who have been trained to at least partially view the world in terms of legal definitions and theories. Although shaming is a term that at first may be thought of as predominately belonging in the realm of the social sciences, it also can be found in the law. Judicial opinions have solidified the role of shaming in the law by affirming the use of shaming as sanctions in criminal law cases. In particular, courts have at times upheld shaming sanctions, such as public apologies or signs identifying one's offense, as legitimate forms of punishment aimed at deterrence and moral condemnation.<sup>94</sup> Thus, shaming is not foreign to the legal profession or legal academics and has long been used as a tool to signal disapproval and enforce norms within the legal system.

When carefully considered, the law professor's understanding of shaming, as framed by legal concepts, focuses perhaps on its broader social goal of deterrence, or when considered in a more favorable light, in rehabilitating the offender. Understood in this manner, shaming is dualistic and communal in nature, as "both views maintain the common elements of public denunciation and shunning"<sup>95</sup> and require a community to be effective.<sup>96</sup> This conceptualization situates shaming as a structured and purposeful social mechanism with historical legitimacy in legal contexts that helps explain why shaming quietly persists in legal education,<sup>97</sup> despite

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<sup>92</sup> Nancy J. Knauer, *Learning Communities: A New Model for Legal Education*, 7 ELON L. REV. 193, 201 (2015) (noting that the Kingsfield method of education, which includes shaming, has decreased because of efforts to make legal education less harsh).

<sup>93</sup> Jason G. Dykstra, *Teaching the Arc of Electric Spark: Igniting Curiosity, Creativity, and Innovation Throughout the Law School Curriculum*, 45 N. ILL. UNIV. L. REV. 194, 236 (2025).

<sup>94</sup> See *United States v. Gementera*, 379 F.3d 596, 609 (9th Cir. 2004) (affirming defendant's punishment of wearing a sandwich board stating guilt); *HTH Corp. v. NLRB*, 823 F.3d 668, 678 (D.C. Cir. 2016) (upholding employer's punishment of reading a letter from the NLRB in front of employees by opting to have an NLRB employee read the letter in the employer's place). *But see Int'l Union of Elec., Radio & Mach. Workers v. NLRB*, 383 F.2d 230, 233-34 (D.C. Cir. 1967) (rejecting employer's punishment of reading a letter to a group of employees during work hours as it would be degrading and humiliating and will affect the employer's and Union's relationship).

<sup>95</sup> Deni Smith Garcia, *Three Worlds Collide: A Novel Approach to the Law, Literature and Psychology of Shame*, 6 TEX. WESLEYAN L. REV. 105, 112 (1999) (explaining that the foundation of modern shaming stems from earlier liberal and utilitarian theories).

<sup>96</sup> *Id.*

<sup>97</sup> Although shaming has certainly been diminished in legal education, it has yet to disappear entirely. Katie Rose Guest Pryal, *Front-Line Faculty and Systemic Burnout: Why More Faculty*

calls to make legal education more empathetic.<sup>98</sup> The unfortunate appeal of shaming lies in its perceived past utility as both a signal of standards and discipline.

Shaming in the classroom also finds some legitimacy in philosophy and social science research. For example, some modern philosophers have argued that shame can support character development because it encourages self-reflection and fosters pro-social sensitivity.<sup>99</sup> The main idea, with roots in Aristotelian philosophy,<sup>100</sup> is that shame “shapes one’s internal norms, and these norms become socially independent.”<sup>101</sup> Philosopher Jean-Jacques Rousseau similarly emphasized that shame can be a force that binds individuals to social norms and can foster a sense of ethical responsibility.<sup>102</sup> When used constructively, it can be considered a developmental tool because its negative emotional charge acts as a successful motivator.<sup>103</sup> Rooted in philosophical traditions, this envisions shame as a mechanism for cultivating virtue and moral character.

Similarly, some social science and education research suggested that shame can motivate learning. Instead of shying away from shame, it is thought of as a learning prompt that can be deliberately used.<sup>104</sup> For example, consider the use of it in the medical profession: students are often shamed when they don’t know the answer to a question or if they make a medical mistake.<sup>105</sup> This form of constructive embarrassment is intended to reinforce the importance of knowledge and precision, which in turn, should drive students to study harder and avoid future errors. In this light, shame can be productive for adult learners, and even transformative, when it is used as “something to learn from and learn through.”<sup>106</sup> When embedded within a supportive educational framework, some researchers posit that shame has the potential to function as an edifying instrument that can foster academic and professional competence.

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*Should Attend to Law Students’ Mental Health and the Inequities Caused by Faculty Who Opt Out*, 27 J. LEGAL WRITING INST. 199, 201 (2023) (“From my own observations, some law professors have continued to blame their students for these manifestations of mental health struggles in the classroom, blaming laziness and poor work ethic. Many professors refuse to alter their pedagogy despite the overwhelming social upheaval we are living in, citing the necessity to maintain ‘rigor.’”).

<sup>98</sup> Ian Gallacher, *Thinking like Nonlawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect its Importance*, 8 LEGAL COMM’N. & RHETORIC 109, 139–140 (2011).

<sup>99</sup> Sabrina B. Little, *A Case for Shame in Character Education*, 42 STUD. IN PHIL. & EDUC. 283, 284 (2023).

<sup>100</sup> *Id.* at 285 (noting that “for Aristotle, the path to virtue depends on shame.”).

<sup>101</sup> *Id.* at 286.

<sup>102</sup> JEAN-JACQUES ROUSSEAU, *EMILE, OR ON EDUCATION* 94 (Allan Bloom trans., Basic Books 1979) (1762).

<sup>103</sup> Little, *supra* note 99, at 295.

<sup>104</sup> Jude Walker, *Shame and Transformation in the Theory and Practice of Adult Learning and Education*, 15 J. TRANSFORMATIVE EDUC. 1, 4 (2017).

<sup>105</sup> See Sandy Miles, *Addressing Shame: What Role Does Shame Play in the Formation of a Modern Medical Professional Identity?*, 44 BJ PSYCH. BULL. 1 (2020).

<sup>106</sup> Walker, *supra* note 104, at 11.

The philosophical traditions and strands of social science that have framed shame as a potentially constructive force in education have been challenged by additional comparable research in psychology and teaching methodology, particularly in the context of higher education. Shame is being increasingly recognized as an emotion that constructs a barrier to learning.<sup>107</sup> Studies suggest that both explicitly and subtly shaming students can erode motivation, increase anxiety, and undermine studying.<sup>108</sup> Shame often correlates with increased fear of failure, particularly among students from marginalized backgrounds and first-generation law students who may already experience heightened vulnerability in law school.<sup>109</sup> In this view, shame is not a constructive pedagogical tool, but rather, it is an emotional burden that can impede learning and deepen educational inequities. Given the intensity of legal education, as well as the professional pressures law students face, these effects are especially troubling in the law school context.

Yet shame can likely be found at least on two levels in law schools. First, at a macro-level,<sup>110</sup> shaming is prevalent throughout the legal education process. It exists through the concept of bad grades, which signals to students a level of inadequacy that can be internalized and cause students to withdraw from their learning.<sup>111</sup> Publicizing class ranks can further deepen this shame when students are not highly placed, as does failing to qualify for prestigious honors such as law review and moot court. Second, at a micro-level, shaming can be found in the classroom and in professors' critiques. Both implicit and explicit reactions, through tone, language, and manner of feedback, can shame students for mistakes and gaps in knowledge.<sup>112</sup> This localized experience of shame can compound the broader institutional pressures, making it a pervasive force that can hinder learning and professional development.

Simultaneously, it is important to recognize that professors themselves can feel ashamed in the classroom. Legal educators, especially those early in their teaching careers or navigating institutional pressures, may experience feelings of inadequacy or self-doubt that can manifest when teaching. Consider, for example, the new professor who hesitates before asking students if they have any questions in an effort to avoid feeling inadequate if they do not know the answer. Professors can feel shame for not giving students the chance to ask questions and again, feel shame if they fail to answer or explain a concept adequately.<sup>113</sup> In such moments, shame can surface as frustration, defensiveness, or an assertion of authority. One unfortunate manifestation of this reaction is through shaming students. Understanding this

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<sup>107</sup> See Lisa Modenos, *Shame and Adult Learners* 30 J. ADULT & CONTINUING EDUC. 5, 8 (2024).

<sup>108</sup> See Alexandria Serra, *AI Lawyering Skills Trainers: Transforming Legal Education with Generative AI*, 16 CASE W. RES. J. L. & TECH. INTERNET 74, 87 (2025) (noting that the Socratic Method can cause students to worry that they will not look intelligent in front of their peers). This would likely lead to a feeling of shame.

<sup>109</sup> Modenos, *supra* note 107, at 8.

<sup>110</sup> I first came across the idea of macro and micro levels of shame in elementary education in Ruth Leitch, *The Shaming Game: The Role of Shame and Shaming Rituals in Education and Development*, ERIC ED 433483 (Apr. 1999), <https://eric.ed.gov/?id=ED433483> [<https://perma.cc/E4JW-MEUB>]. I believe it is equally applicable to legal education.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Brian Manternach, *Shaming and Blaming*, 78 J. SINGING 103, 105 (2021).

emotional dynamic does not justify the use of shame, but it does suggest that professors must also be supported in developing reflective, emotionally intelligent teaching practices that interrupt the cycle. Naming and addressing the emotional experiences of faculty is therefore another necessary part of fostering kinder and more constructive classroom cultures.

When considering the importance of kindness in legal education, shaming has no place in the law school classroom, and it is particularly problematic in a legal writing course. As one of the few ABA instructional requirements placed on law schools,<sup>114</sup> legal writing courses offer a unique position in the law school curriculum because they commonly present the first opportunity for students to engage deeply with legal analysis and to receive sustained individual feedback.<sup>115</sup> In this simultaneously formative and summative environment, the professor's approach must recognize the vulnerability inherent in learning a new discourse, especially when it involves submitting early legal work for critique.<sup>116</sup> Even done unintentionally, overt comments, a less than kind tone, or a disproportionate emphasis on error can cause shame to have a lasting negative consequence. If this occurs, the risk of undermining students' confidence and reinforcing feelings of inadequacy that often disproportionately affect female students and students from underrepresented backgrounds may rise.<sup>117</sup>

Moreover, shaming can cause serious damage to law students' professional identity formation. When feedback is delivered in even a carelessly shaming manner,<sup>118</sup> it can undermine the values of professionalism, collegiality and respect that legal writing professors work diligently to instill. For example, consider the comment "Your analysis fails to apply the law correctly" penned on a student's legal writing assignment. Although the professor may think this is a helpful comment that is simply pointing out a problem to a student that must be addressed, it is shame-inducing because of its harsh and absolute tone. The word fail is especially shaming because it suggests a fundamental failure rather than a place for improvement.

Kindness in this context would not require softening expectations or avoiding critique; rather, it demands intentional framing of feedback that is rigorous yet

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<sup>114</sup> *Standards and Rules of Procedure for Approval of Law Schools 2024–2025*, AM. BAR ASS'N (2024),

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf) [https://perma.cc/ZK57-WY28].

<sup>115</sup> Katrina Robinson, *Let Them Lead: Professional Identity Formation in Student Conferences*, 30 *PERSP.* 8, 8 (2023).

<sup>116</sup> Angela B. Debush, *Using Intention-Setting Practices to Increase Student Engagement in the First-year Legal Writing Classroom*, 27 *J. LEGAL WRITING INST.* 237, 245 (2023).

<sup>117</sup> See David Grenardo, *What About Us? How Law Schools Can Help Historically Underrepresented Law Students Develop Their Professional Identities*, 75 *MERCER L. REV.* 1483, 1502 (2024).

<sup>118</sup> Consider Brian Manternach's introduction to *Shaming and Blaming* where he has a visceral reaction to being wrong when he was part of a group who was asked to point to the lowest part of the body the diaphragm reaches on an inhale. He wondered about the public call out and if the pedagogue intended to shame. See Manternach, *supra* note 113, at 104.

respectful, balancing directness with humanity. In other words, it encourages non-punitive accountability that holds students to high standards. As educational research increasingly affirms the connection between psychological safety and academic performance, legal writing pedagogy should continue to adopt feedback practices that intentionally use kindness in a manner that promotes learning through trust and encouragement, while still retaining academic rigor.

### Affirmational Engagement

Finally, legal education is strengthened by kindness when rigorous expectations are paired with a genuine confidence in students' potential. Going beyond a supportive tone or even encouraging words, I propose the term "affirmational engagement" to describe an expression of pedagogical kindness that is rooted in the professor's authentic confidence in their students' capacity to grow into the demands of the legal profession. It is not simply a belief that students are capable in a general sense as that has already been established by their acceptance into law school. Rather, it is about trusting students to navigate ambiguity when answers are not immediately apparent. It consigns students to actively engage with complex materials and to take ownership of their learning.

Affirmational engagement is not a term that is currently widely used in legal education or the social sciences. A definition for it, therefore, is not commonly available, but can be adapted from established concepts in psychology and communication. In psychology, self-affirmation refers to validating and reinforcing a person's perception of self-worth and identity through positive interactions.<sup>119</sup> Engagement is a multidimensional construct involving behavioral, emotional, and cognitive dimensions.<sup>120</sup> Combined, affirmational engagement can be understood as the process by which individuals become meaningfully involved when they feel that their identity is recognized and affirmed within an interaction or environment.

This concept gains clarity and support when viewed through a cross-disciplinary lens that brings together feminist psychology's relational-cultural theory within the framework of humanistic psychology's self-determination theory, especially as they apply to legal education. According to relational-cultural theory, interpersonal dynamics encourage personal growth.<sup>121</sup> It posits that individuals thrive in places where they feel seen. Their motivation to do well and to be connected with their community increases when they perceive that they are valued, understood, and capable of making meaningful contributions.<sup>122</sup> Self-determination theory advances the idea that people are motivated to succeed when they feel competent, autonomous, and connected to others.<sup>123</sup> When individuals experience this trifecta, their intrinsic motivation and engagement are heightened. Together, these two theories help

<sup>119</sup> *APA Dictionary of Psychology: self-affirmation*, AM. PSYCH. ASS'N, <https://dictionary.apa.org/self-affirmation> [<https://perma.cc/WM8H-7UKH>] I believe the APA Dictionary of Psychology definition also applies to affirmation of others.

<sup>120</sup> Jennifer A. Fredricks, Phyllis C. Blumenfeld & Alison H. Paris, *School Engagement: Potential of the Concept, State of the Evidence*, 74 REV. EDUC. RSCH. 59, 60 (2004).

<sup>121</sup> Judith V. Jordan, *Relational-Cultural Theory: The Power of Connection to Transform Our Lives*, 56 J. HUMANISTIC COUNSELING 228, 230-231 (2017).

<sup>122</sup> Amy Rector-Aranda, *Critically Compassionate Intellectualism in Teacher Education: The Contributions of Relational-Cultural Theory*, 70 J. TCHR. EDUC. 388, 393 (2019).

<sup>123</sup> LISA LEGAULT, SELF-DETERMINATION THEORY 1 (Virgil Zeigler-Hill & Todd K. Shackelford, eds., 2017).

illuminate the rationale behind affirmational engagement as I define it: a highly motivated form of participation that emerges when learners are both personally affirmed and meaningfully connected within their environment.

Affirmational engagement, in the context of legal education, refers to a pedagogical approach where professors actively communicate a steadfast belief in their students' potential to thrive under the demands of law school, particularly in the face of uncertainty and complex material. It can be found in how professors express their expectations, not as traps or as tests, but as invitations to engage in critical thinking. Instead of focusing on the errors all law students are bound to make, affirmational engagement highlights promising instincts and affirms law students' developing skills. It is a form of pedagogical kindness that trusts students with real challenges and assumes that they are capable of successfully working through them.

Although this article focuses primarily on gender, the perception and reception of kindness in legal education are also shaped by intersecting identities. Faculty of color, LGBTQ+ professors, and those from less institutionally privileged backgrounds may face distinct pressures related to emotional expression and classroom demeanor. When these professors engage students through kindness or affirmation, their efforts may be interpreted differently or even discounted because of racialized and gendered expectations.<sup>124</sup> Similarly, students from historically marginalized groups may depend differently on affirming feedback and relational trust to feel fully seen in classroom spaces. Attending to these intersectional dynamics highlights the potential of kindness not only as a teaching strategy, but also as a quiet force for equity in legal education.

This approach centers on the professor-student relationship – a dynamic that plays a crucial role in student motivation and learning outcomes. Social science research confirms “a significant relationship between the perception of how much students feel cared for by their professors and how much effort students put forth, as well as how much a student thinks he or she learned in class.”<sup>125</sup> This level of care tends to spill over into how readily students will apply concepts they learned in the classroom into their lives.<sup>126</sup> Revealingly, both positive and negative attitudes towards students that professors convey has been identified as motivators and as demotivators for students.<sup>127</sup> This dynamic underscores the powerful role that faculty attitudes can serve. The findings suggest that expressions of care and confidence are central to fostering student engagement and academic self-concept.

This dynamic becomes especially important in challenging courses, such as

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<sup>124</sup> See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 78–82 (2019) (finding that implicit bias in course evaluations and classroom interactions disproportionately affects faculty of color and women of color).

<sup>125</sup> Amber R. Dickinson & Ursula W. Kreitmair, *The Importance of Feeling Cared for: Does a Student's Perception of How Much a Professor Cares About Student Success Relate to Class Performance?*, 17 *J. OF POL. SCI. EDUC.* 356, 357 (2021).

<sup>126</sup> *Id.*

<sup>127</sup> Joan Gorham & Diane M. Christophel, *Students Perceptions of Teachers' Behaviors as Motivating and Demotivating Factors in College Classes*, 40 *COMMUN. Q.* 239, 247 (1992).

most law school offerings. Research suggests that the level of respect professors demonstrate for students' academic abilities meaningfully affects outcomes.<sup>128</sup> Perceived faculty respect has been linked to a slight bump in course grades, and a more substantial increase in student confidence.<sup>129</sup> When professors express belief in their students' potential through tone and expectations, students are more likely to persist through difficulty and engage more deeply with material.

Despite these findings, legal education faces persistent challenges in cultivating classroom environments where students feel respected and seen. Elizabeth Mertz's ethnographic work demonstrates that the legal classroom often trains students to value detachment and linguistic precision over relational understanding.<sup>130</sup> Legal scholars like Susan Sturm have argued for a more inclusive pedagogical approach that actively shapes institutional culture indicating that change can occur when faculty and students work together to improve education.<sup>131</sup> More recent scholarship on faculty-student dynamics, however, cautions against overcorrecting the neglect suggested, particularly if it results in helicopter teaching.<sup>132</sup> Affirmational engagement offers a middle path by fostering trust and respect without diminishing rigorous expectations, thus empowering students to develop both independence and professional maturity.

In the legal writing classroom, affirmational engagement demonstrating respect and belief in students might take on the form of providing feedback as live critiques during individual writing conferences. These conferences are most effective when professors display an authentic confidence in their students' ability to engage with complex feedback and revise accordingly. Instead of marking papers up with corrective comments, professors provide suggestions to their students that highlight their strengths and identify areas for growth in real time.<sup>133</sup>

For example, a professor would ideally start the student conference by identifying an aspect of the assignment where the student performed well, such as identifying key legal issues, or if needed, something more basic such as following guidelines or having a strong organizational foundation. This initial positive focus is not just a pedagogical nicety; rather, it is a strategic expression of confidence. It helps to establish a respectful tone that signals to the student that they are in a safe space where their work is valued. Further, it lets the student know that the professor is taking their work seriously and wants to provide meaningful feedback by engaging

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<sup>128</sup> Marina Micari & Pilar Pazos, *Connecting to the Professor: Impact of the Student-Faculty Relationship in a Highly Challenging Course*, 60 COLL. TEACHING, 41, 45 (2012) (surveying undergraduate students in six organic chemistry courses).

<sup>129</sup> *Id.*

<sup>130</sup> See ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER"* 45 (2007).

<sup>131</sup> Susan Sturm, *The Architecture of Inclusion: Advancing Workplace Equity in Higher Education*, 29 HARV. J. L. & GENDER 247, 290 (2006).

<sup>132</sup> See Emily Grant, *Helicopter Professors*, 53 GONZ. L. REV. 1, 5-6 (2017). (Like helicopter parenting, helicopter professors produce similar detrimental results for students such as reduced critical thinking, denial of educational autonomy, and an overreliance on a professor or professors).

<sup>133</sup> See generally Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N. UNIV. L. REV. 227, 257-58 (2015).

in a conversation instead of just pointing out deficiencies.<sup>134</sup> From this starting point, the student should be in a position to think more critically about their work without the fear of being judged. It also acknowledges the student's existing skill and subtly signals that becoming a strong legal writer involves a process that they are being taught.

These live critique conferences provide affirmational engagement not just in the spoken words, but also in what they silently signal. They demonstrate to students that their professors trust their capacity to reflect and to improve their work. They also quietly demonstrate that their students are worth investing time and attention in, because they know that they can improve their work. These live critique conferences are grounded in high expectations that are paired with a genuine belief in their students' potential.<sup>135</sup>

Affirmational engagement offers a meaningful middle ground for professors and students to meet; it is not a site for solely passive reception or performative rigor. Rather, it is a space where intellectual challenge, relational respect, and encouragement coexist. In this context, kindness is grounded in high expectations and professional trust. It affirms students' capacity and identity while reinforcing students' efforts as being productive and appreciated. Research in cognitive psychology supports this approach: students are more likely to persist and ultimately be successful when professors convey a sincere belief in their potential.<sup>136</sup> In this way, affirmational engagement fosters students' critical thinking and intellectual growth while still providing space for what each student and professor brings to the learning environment.

## Conclusion

Kindness underscores the human element of legal education. It should be recognized as a foundational principle in legal education that enables rigorous intellectual development while fostering an environment of respect, equity, and emotional safety. Amid the gendered dynamics that continue to subtly shape the legal academy, kindness offers a gentle corrective to traditional practices that often privilege harshness and impersonal critique. When expressed through honest feedback, accountability without shaming, and affirmational engagement, kindness becomes a tool for developing the intellectual precision, professional identity, and resilience that legal education demands. While these principles are especially visible in legal writing instruction, where vulnerability and critique are central to the learning process, they are equally applicable across the broader law school

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<sup>134</sup> See Ellie Margolis, *Doing Less—Reflections on Cognitive Load and Hard Choices in Teaching First-Year Legal Writing*, 68 ST. LOUIS UNIV. L.J. 399, 416 (2024) (stating that professors focus more on fundamental issues during live conferences rather than minutia).

<sup>135</sup> Amanda L. Sholtis, *Say What?: A How-To Guide on Providing Formative Assessment to Law Students Through Live Critique*, 49 STETSON L. REV. 1, 7-9, 10 (2019).

<sup>136</sup> See SARAH ROSE CAVANAGH, *THE SPARK OF LEARNING: ENERGIZING THE COLLEGE CLASSROOM WITH THE SCIENCE OF EMOTION* 102 (2016).

curriculum.

As legal educators reexamine the conditions that support effective teaching and meaningful learning, kindness should be recognized as a pedagogical strength and a professional imperative. I did not always see it this way. But now, when students refer to me as a kind professor, I no longer worry that it signals softness or lowered expectations. I understand it as a reflection of an intentional, rigorous, and humanizing approach to legal education, and it makes me smile.