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PREGNANT PAUSE: THE INTERPLAY OF GENDERED EXPECTATIONS AND PREGNANCY IN LEGAL EDUCATION

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I. INTRODUCTION

Everyday we make choices concerning our families.[1] In private practice, I made a choice to take an official "maternity leave" after the birth of my first child.[2] I skipped the next two opportunities to take parental leave because I chose to enter legal academia ten days after my second child was born. Then, I undertook scholarship and teaching activities immediately before and after the birth of my third child. The premise of this article is that such reasons are personal to the individual and the known consequences strategically considered and borne by the individual. This article does not seek to justify or judge the variety of reasons influencing women's choices related to family, parental leave, and the care-giving of family and children, or whether it is possible to "have it all." As I made the decision to maintain an active work status throughout my pregnancy and immediately following the birth of my third child, I assumed that I was in a position to calculate the consequences of my decision—and that the consequences would not manifest until *after* the child entered my life.[3] This article reflects upon interactions with students and

1. *See* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974) ("This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.").

2. Hereinafter, individuals—whether women or men—taking a leave from job duties of more than a few days following the birth, adoption, or fostering of a minor child is referred to collectively as taking "parental leave."

3. I believe that my recent decisions related to family and career responsibilities were rationally based. I had data (e.g. student course ratings) of student perceptions related to

law faculty peers during the course of my recent pregnancy and posits that my students held certain perceptions, related to teaching effectiveness and my ability to be fair and unbiased, which arose from their observation of my pregnant body. This article seeks to identify the extent of negative consequences springing from their associations with my body. Furthermore, this article argues that remedial actions should be implemented to combat the deleterious effects of such negative associations in the law school setting.

Perhaps it had something to do with recent news stories[4] that sparked the interest of my law school peers on this subject, causing them to share unsolicited remarks and advice on the subject of whether my pregnancy and upcoming family addition interfered with my ability to perform the duties of the job. I was scheduled to deliver about four weeks before the end of the semester. I expected that both positive and negative comments and ratings for the end-of-course student evaluations (hereinafter teaching ratings) would follow the trend of the past years. In fact, I made certain adjustments to my course design and delivery to address previous concerns conveyed by this group of students and past students in the same course in an effort to change their perceptions.[5] My predictions turned out to be wrong. But why? Aside from the calculated improve-

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my teaching effectiveness for the semester that I taught immediately after the birth of my second child and, even though I had my negative remarks, I had not previously received remarks alleging that my personal life or commitments interfered with my ability to perform competently in the classroom. I deduced that the same would be true again this time. Ultimately, I concluded that it was in my and my family's best interest to forego a formal parental leave from my work-life, especially in my early years in academia, as I worked to prepare for promotion and tenure. I made the decision expecting that students (as well as colleagues and administrators) would recognize that my work would not be negatively impacted by my pregnancy or parenting responsibilities. In my prior pregnancies, occurring during private practice, neither my colleagues nor my clients questioned my commitment or ability to do the job due to family or pregnancy reasons.

4. At least one other person's decision to take a truncated parental leave has made recent headline news: that is, the backlash surrounding Yahoo CEO Marissa Mayer's decision to take a short maternity leave. From the many blog discussions dedicated to taking a position on the matter to German Family Minister Kristina Schröder publically criticizing Marissa Mayer's decision, Marissa Mayer's pregnancy and plans to care for her baby have aroused lively public discussion. *See, e.g.*, Carolyn Anderson, *Marissa Mayer Starts Maternity Leave Debate*, HUFFINGTON POST (July 20, 2012, 5:21 PM), http://www.huffingtonpost.com/carolyn-anderson/maternity-leave_b_1687106.html (describing the dialogue surrounding the maternity leave of Yahoo CEO Marissa Mayer).

5. During my teaching experience, I observed the impact a professor's pregnancy had on students. In this article, I compare students' teaching ratings in the second semester of the course which coincided to my being visibly pregnant to teaching ratings received from the same group of students in the previous semester (before my pregnancy was apparent) and to teaching ratings collected from other students taking the year-long course in the two previous years. This analysis is included in Part III.

ments to the course design, my pregnant state was the only variable to change. At the end of the semester, I looked at the comments and I noticed a couple of new themes that developed among the negative remarks.[6] I reflected upon the semester and discovered that I also could point to a series of interactions with students and colleagues that were markedly different in nature. It seemed that my pregnancy and decisions related to taking a parental leave—and the timing of such life events—mattered to them. Thus I began my search for answers in legal scholarship. Was my experience unique? Where did the intrusive remarks come from?

Plenty of research exists, which manipulates the interplay between gender and race in the context of student interactions, including students' ratings of teachers.[7] What I really wanted to know, though, was whether I was alone in my experience as a pregnant law professor and mother to young children, and if my plan to "stay in the game" for the coveted worthy prizes (promotion! tenure!) would somehow be threatened by what I could not foresee and yet lived. A simple Westlaw or Lexis search did not produce the answer.[8]

My research, however, did not identify systematic empirical research exploring the impact that pregnancy has on students' teaching ratings, promotion, and tenure decisions in higher education. However, in my survey of literature, I encountered one study by sociologists Phyllis Baker and Martha Copp[9] about the experience of a professor of sociology at the

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6. I am no stranger to negative remarks and I have received gendered feedback before. However, the new themes that surfaced during the time of my visible pregnancy will be discussed in Part III.

7. Much has been written about students' gendered expectations of women professors and their impact on student course ratings. See Deborah J. Merritt, *Bias, The Brain, And Student Evaluations Of Teaching*, 82 ST. JOHN'S L. REV. 235 (2007); Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up Is Hard To Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1 (2010) (examining race, gender, and sexual orientation biases evident in law classrooms and faculty evaluations), for a thorough summary of contemporary research in the subject matter and application to the law school setting.

8. *But see* Catherine J. Wasson & Barbara J. Tyler, *How Metacognitive Deficiencies of Law Students Lead to Biased Rating of Law Professors*, 28 TOURO L. REV. 1305 (2012) (providing results from authors' study related to the impact that gender and the traditional low institutional status of legal writing professors have upon teaching ratings).

9. *See generally* Phyllis Baker & Martha Copp, *Gender Matters Most: The Interaction of Gendered Expectations, Feminist Course Content, and Pregnancy in Student Course Evaluations*, 25 TEACHING SOCIOLOGY, no. 1, Jan. 1997, at 29, 29–42 (discussing how gendered expectations adversely impact pregnant professional women). I am indebted to Dr. Baker for sharing her personal experience as an expression of scholarship. Also, I am grateful to Dr. Baker and Dr. Copp collectively for identifying the impact of Dr. Baker's pregnancy on student-professor interactions. Similar to Robert S. Chang and Adrienne D.

University of Northern Iowa in 1997.[10] The Baker and Copp findings reveal that pregnancy may diminish a professor's standing in the classroom and the associated bias can have a negative impact on teaching ratings.[11] This article will explore student perceptions of teacher effectiveness and pregnancy through Dr. Baker's and my anecdotal experiences as well as my past student evaluation data. I will also draw on my experiences and those of my current colleagues to draw a more complete picture related to attitudes and perceptions held by students and law faculty related to pregnancy and decisions related to the care of minor children.[12] This data was gathered via a short anonymous survey of fulltime law faculty at my institution (see Appendix).[13]

My findings will address the historical backdrop and socio-cultural context related to decisions, attitudes, and perceptions related to pregnancy and the care giving of minor children[14] in Part II. Then, I will offer personal anecdotal observations and share the results of a survey related to student and faculty perceptions and attitudes regarding pregnant professors' ability to perform job duties in Part III. In Part IV, I will remark on the potential ramifications of the study results. Then, in Part V, I will discuss and propose remedial actions. Lastly, I will conclude by propos-

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Davis' findings in *An Epistolary Exchange Making Up Is Hard To Do: Race/Gender/Sexual Orientation in the Law School Classroom*, in the Harvard Journal of Law and Gender, Dr. Baker and Dr. Copp created a historical record that these things happened in 1992. Without the work of Baker and Copp, I may have well concluded that my experiences as a pregnant law professor in 2012 were not shared by others, or were unique to my circumstances and/or setting.

10. *See* Baker & Copp, *supra* note 9, at 31–42 (explaining the data findings of Copp and Baker's study).

11. *Id.* at 30.

12. This work includes discussion related to the care giving of minor children for a couple of reasons. First, it was my experience that my pregnant state heightened others' awareness of my external life, in this case my parental duties, and to the apparent conclusion that parents of young children might choose or be forced to give less to work than colleagues who are not currently parenting minor children. Second, it is a fortuitous coincidence that I have more than a few colleagues at my present institution who have recently added children to their families. Therefore, by slightly extending the scope of my research to include and highlight their experiences, we might learn something about our collective experiences.

13. ILYA A. IUSSA, SURVEYMONKEY, SURVEY OF LAW FACULTY RELATED TO CAREER/FAMILY LIFE OPPORTUNITIES, PERSPECTIVES, AND DECISIONS (2012) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). The survey referenced herein was conducted in August 2012 and circulated to all members of the fulltime law faculty—both doctrinal and legal writing—at Phoenix School of Law. The methodology by which this survey was conducted is fully described in Part IV.D. The complete survey is included in the appendix.

14. The term minor children is defined to include children under the age of eighteen. 755 ILL. COMP. STAT. ANN. 5/11-1 (West 1986).

ing a call to action to respond to the deleterious effects unearthed by my research findings.

II. Historical and Socio-Cultural Considerations

A. *Looking Back: Pregnant Teachers in Public Schools*

Historically, social norms and cultural values limited the ability of women to fulfill their work-life choices.[15] While the vast majority of teachers were women in 1919,[16] communities expressed concern that the prevalence of women teachers would "warp the psyches" of boys.[17] In the time leading up to the Great Depression, policies barring the employment of married women as teachers were implemented by school districts across the country.[18] As the economic realities of the Great Depression set in, married women—presumed to have husbands that provided financially for their families—were viewed to be in competition with men and single women both believed to "need" the teaching jobs more than the married teachers.[19] Policies restricting the ability of married women to seek gainful employment as teachers continued into the 1920's and 1930's.[20] At this time, some expressed beliefs that work "interfered with a married woman's duty to home and family" or a worry of "race suicide," because it would lead to a lower birth rate among those better

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15. *See* Rosa D. Wiener, Pregnant Teachers in the Classroom 1–48 (June 8, 1987) (unpublished seminar research paper, Georgetown University Law Center) (on file with Georgetown University Law Library System) (describing the historical struggle of women in the workplace). This citation is derived from a student's research work while enrolled in a seminar *Gender and American Legal History* taught by Professors Richard Chused and Wendy Williams at Georgetown University Law Center (GU). This is part of a special collection that the GU Library comprises along with other scholarly student works and is available to other scholars. Specifically, these student works cover a wide spectrum of gender in legal history. More information on these works may be found at the Georgetown Law Library's website, http://www.law.georgetown.edu/library/collections/gender-legal-history/.

16. According to Wiener's research, 86% percent of teachers in 1919 were women. Wiener, *supra* note 15, at 3–4.

17. Wiener, *supra* note 15, at 4.

18. *Id.*

19. Married women were presumed to have husbands who financially provided for their families, which meant the wives did not have to work and the single individuals "needed" the job more. Wiener, *supra* note 15, at 5.

20. *See* Claudia Goldin, Understanding the Gender Gap: An Economic History of American Women 160–74 (1990) (explaining how in the 1920's, women were restricted in gaining employment through laws that did not allow married women to be hired and empowered employers to fire women if they married on the job).

educated individuals.[21] World War II has been attributed for creating a labor shortage that led to married women becoming employable as teachers.[22]

1. Teach "Until You Show" Maternity Leave Rules

After World War II, married women remained in the teaching corps.[23] However, they were frequently deemed unsuitable to teach while pregnant.[24] Soon after the end of World War II in 1948, a National Education Association survey revealed that 57% of school districts had mandatory maternity leave policies, usually starting around the time that pregnancy becomes visible (from about the fourth to sixth month of pregnancy) and lasting well until after childbirth.[25] According to the National Education Association Survey, about 43% of the remaining school districts had no maternity leave policies.[26] Research reveals a variety of rationales—historically advanced by school boards supporting policies—which would prevent visibly pregnant women from teaching, including: physical injury to the mother or child, that pregnant teacher's focus would be elsewhere and not on her students, that pregnant teacher's bodies would limit their ability to handle the physical rigors of the job, and that the display of a pregnant teacher's body would undesirably influence students' behavior.[27]

As late as 1974, until the Supreme Court ruled in *Cleveland Board of Education v. LaFleur*,[28] such policies existed around the country,[29] categorically requiring pregnant women teaching in public schools to take

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21. WIENER, *supra* note 15, at 5. *See generally* Wendi Barish, *"Sex-Plus" Discrimination: A Discussion of Fisher v. Vassar College*, 13 HOFSTRA LAB. L.J. 239 (1995) (discussing the plight married women faced with double discrimination).

22. *Id.*; *see also* Nancy E. Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431, 436 (1990) (explaining how World War II allowed for the largest change in the women's labor market).

23. WIENER, *supra* note 15, at 11.

24. *See id.* (discussing the various rules and regulations employed to discriminate against pregnant teachers).

25. *Id.*

26. *Id.*

27. *Id.*

28. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 643(1974) (holding "arbitrary cutoff dates [] [for maternity leave] had no rational relationship to the valid state interest . . . .").

29. For a survey of relevant case law, one should consider *Green v. Waterford*, a decision handed down by the Second Circuit in 1973. *See* Green v. Waterford Bd. of Educ., 473 F.2d 629, 637 (2d Cir. 1973) (referencing contemporary mandatory, unpaid maternity leave decisions and noting a split among two circuit courts on this issue). From the various authorities cited by the Second Circuit in its opinion, one can see how such maternity policies existed, for example, in Connecticut, Virginia, Ohio, Texas, Illinois, California, Florida, and

mandatory, unpaid leaves of absences from teaching as early as five months before their estimated date of delivery.[30] Some of the leave policies were drafted so women were forced to take such leaves and ineligible for reinstatement until the first day of the semester *after* their child turned three months of age, and even then, there was no guarantee that a position would be available to them.[31] Several cases were brought to federal district court challenging the constitutionality of mandatory leave rules across the United States.[32]

As the cases were decided on due process and/or equal protection theories, courts in these cases were tasked to consider whether certain state

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Colorado. *Id.* In *Green v. Waterford*, the Second Circuit identified a split of authority between two of its sister courts, the Sixth Circuit and the Fourth Circuit, stating in part:

> Two closely divided courts of appeals, considering teacher maternity leave provisions substantially similar to the one before us, have reached diametrically opposite conclusions. *Compare* LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184 (6th Cir. 1972) (2-1 decision) (holding mandatory leave provision is unconstitutional), rev'g 326 F.Supp. 1208 (N.D.Ohio 1971), petition for cert. filed, 41 U.S.L.W. 3315 (U.S. Nov. 27, 1972) (No. 72-777), *with* Cohen v. Chesterfield Cnty. Sch. Bd., 474 F.2d 395 (4th Cir. 1973) (en banc; 4-3 decision) (contra), rev'g 326 F.Supp. 1159 (E.D.Va.1971).

Id. at 637. Also in *Green v. Waterford*, the circuit court cited a Fifth Circuit case originating out of Texas which had found that "a rule requiring pregnant employees to take a leave (without assurance of reinstatement) no later than two months before the expected delivery date did not deny equal protection." *See id.* And finally in *Green v. Waterford*, the circuit court identified supportive holdings from four district courts, as well as a remand opinion from Ninth Circuit, stating in relevant part:

> Federal district courts in Illinois, Florida, New York, and California have reached the same result as we do with respect to comparable maternity leave rules. Bravo v. Bd. of Educ., 345 F. Supp. 155 (N.D.Ill. 1972); Pocklington v. Duval Cnty. Sch. Bd., 345 F. Supp. 163 (M.D.Fla. 1972); Monell v. Dep't of Soc. Serv., 4 CCHEmpl. Prac. ¶ 7765 (S.D.N.Y. Apr. 12, 1972); Williams v. San Francisco Unified Sch. Dist., 340 F. Supp. 438 (N.D.Cal. 1972) (non-teacher employee). In Struck v. Sec'y of Defense, 460 F.2d 1372 (9th Cir. 1971), vacated and remanded for consideration of mootness, 409 U.S. 1071[ ] (1972), the Ninth Circuit upheld against an equal protection claim an Air Force regulation providing for discharge of pregnant women officers; contra Robinson v. Rand, 340 F. Supp. 37 (D.Colo. 1972).

Id. at 637. In all the Second Circuit, determined that the mandatory leave provisions were unconstitutional, aligning itself with the decision handed down by the Sixth Circuit in *LaFleur*. *Id.*

30. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 634–35 (1974) (holding "arbitrary cutoff dates [ ] [for maternity leave] had no rational relationship to the valid state interest . . . .").

31. *Id.* ("A teacher on maternity leave is not allowed to return to work until the beginning of the next regular school semester which follows the date when her child attains the age of three months.").

32. *E.g.*, *id.* at 632 (holding such arbitrary mandatory leave policies unconstitutional); Cohen v. Chesterfield Cnty. Sch. Bd., 474 F.2d 395 (4th Cir. 1973) (upholding maternity leave at five months); *Green*, 473 F.2d at 629 (indicating that such policies denied equal protection under the law).

interests justified mandatory, unpaid maternity leave policies.[33] District courts considered arguments made by school boards that attempted to establish compelling state interests behind the policies such as "'concern for the [health and] safety of the teacher and her unborn child,' continuity of education, and administrative convenience,"[34] as well as "physical competence" in mandatory leave cases.[35]

In *Green*, the Second Circuit identified an additional state interest purported to justify the following: the avoidance of "'classroom distractions' caused by embarrassed children 'pointing, giggling, laughing and making snide remarks' about their teacher's condition."[36] The Second Circuit went on to dismiss the "classroom distraction" rationale by stating "[w]e regard any such interest as almost too trivial to mention; it seems particularly ludicrous where, as here, plaintiff taught only high school students. Whatever may have been the reaction in Queen Victoria's time, pregnancy is no longer a dirty word."[37]

2. Cleveland Board of Education v. LaFleur

In 1974, at least three Circuits were divided on the constitutional grounds of such policies and, at last, the Supreme Court took up the question of the constitutionally of such mandatory, unpaid maternity leave policies for public school teachers in *Cleveland Board of Education v. LaFleur*. The Court decided *LaFleur* on due process grounds.[38] Justice Stewart, writing for the majority, framed the issue before the Court:

> [b]y acting to penalize the pregnant teacher for deciding to bear a child, overly restrictive maternity leave regulations can constitute a heavy burden on the exercise of these protected freedoms. Because

33. *E.g.*, *LaFleur*, 414 U.S. at 634 (holding that mandatory leave had no relation to any state interest).

34. *Green*, 473 F.2d at 634.

35. *See* Brief of Petitioner, Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (No. 72-777), 1973 WL 173845 at *8–9 (noting the physical competence of pregnant teachers to carry out their duties, i.e. ability to break up fights and the problems associated with "frequency of urination").

36. *Green*, 473 F.2d at 635 (noting the classroom distraction policy justification the school board asserted in the case emerged from the district court opinion in *LaFleur*).

37. *Id.*

38. *LaFleur*, 414 U.S. at 651 (holding that "the mandatory termination provisions of the *Cleveland* and *Chesterfield County* maternity regulations violate the Due Process Clause of the Fourteenth Amendment, because of their use of unwarranted conclusive presumptions that seriously burden the exercise of protected constitutional liberty.") (emphasis added). Interestingly, however, the lower courts decided these cases on *equal protection* grounds. LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184, 1188 (citing the 6th Circuit *LaFleur* opinion, and Chesterfield v. Cnty. Sch. Bd., 326 F.Supp. 1159 (1971) (emphasis added).

> public school maternity leave rules directly affect one of the basic civil rights of man, the Due Process Clause of the Fourteenth Amendment requires that such rules must not needlessly, arbitrarily, or capriciously impinge upon this vital area of a teacher's constitutional liberty.[39]

The Court considered the maternity leave policies of two school boards having mandatory termination provisions and restrictions on the eligibility of teachers to return to work after giving birth.[40] The Court in *LaFleur* considered three state interests advanced by the school boards: continuity of education, the health of the teacher and her unborn child, and physical competence of the teacher.[41] The body of the Court's decision is fairly devoid of factual findings despite the plethora of medical and expert testimony presented by the parties to advance and combat the rationale behind the policies. However, through the use of footnotes and case analysis, the Court weighs in on questions related to the possible socio-cultural origins of the rules, as well as present certain medical and evidence-based conclusions related to a pregnant woman's ability to perform teaching duties.[42]

Similar to the Second Circuit in *Green*, the Court in a footnote contemplated "the possible role of outmoded taboos in the adoption of the rules"[43] when it noted:

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39. *LaFleur*, 414 U.S. at 640.

40. The two policies were from the Cleveland Board of Education and the Chesterfield County School Board:

> Under the Cleveland rule, the teacher is not eligible to return to work until the beginning of the next regular school semester following the time when her child attains the age of three months. A doctor's certificate attesting to the teacher's health is required before return; an additional physical examination may be required at the option of the school board.
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> [Under] the Chesterfield County rule . . . the teacher becomes eligible for re-employment upon submission of a medical certificate from her physician; return to work is guaranteed no later than the beginning of the next school year following the eligibility determination. The medical certificate is both a reasonable and narrow method of protecting the school board's interest in teacher fitness, while the possible deferring of return until the next school year serves the goal of preserving continuity of instruction. In short, the Chesterfield County rule manages to serve the legitimate state interests here without employing unnecessary presumptions that broadly burden the exercise of protected constitutional liberty.

Id. at 648, 650 (emphasis added).

41. *Id.* at 640–41.

42. *See generally id.* at 641 n.9, 642 n.10, 650 n.15, 655 n.3 (recognizing "[t]eachers who undergo abnormal pregnancies may well be disabled, either temporarily or for a substantial period. But as I read the Court, boards may deal with abnormal pregnancies like any other disability.") (Internal cross-references omitted).

43. *Id.* at 660.

> The records in these cases suggest that the maternity leave regulations may have originally been inspired by other, less weighty, considerations. For example, Dr. Mark C. Schinnerer, who served as Superintendent of Schools in Cleveland at the time the leave rule was adopted, testified in the District Court that the rule had been adopted in part to save pregnant teachers from embarrassment at the hands of giggling schoolchildren; the cutoff date at the end of the fourth month was chosen because this was when the teacher "began to show." Similarly, at least several members of the Chesterfield County School Board thought a mandatory leave rule was justified in order to insulate schoolchildren from the sight of conspicuously pregnant women. One member of the school board thought that it was "not good for the school system" for students to view pregnant teachers, "because some of the kids say, my teacher swallowed a water melon [sic], things like that."[44]

Related to termination provisions for pregnant teachers, the Court noted that while an objective of "keeping physically unfit teachers out of the classroom"[45] is a legitimate state interest on education and safety grounds, the mandatory termination provisions were ultimately unconstitutional because they "contain[ed] an irrebuttable presumption of physical incompetency, and that presumption applies even when the medical evidence as to an individual woman's physical status might be wholly to the contrary."[46] The Court found the Cleveland and Chesterfield County provisions requiring a medical release before women are eligible to return to work following birth were acceptable since they were narrowly drawn to protect school boards' legitimate interests in teacher physical competency and fitness, and allowed for individual determinations of physical competence.[47] However, the Court struck down the additional restriction in the Cleveland rule that made the teachers wait at least until their children reach the age of three months before they became eligible to return to work.[48] The Court could find no reasonable justification in the three-month rule.[49] On the subject, the Court stated in a footnote,

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44. *Id.* at 641 n.9.

45. *Id.* at 643.

46. *Id.* at 644; *see also* Green v. Waterboard Bd. of Educ., 473 F.2d 629, 635–36 (1973) (noting the state interests to be merely speculation and the argument devoid of any supporting evidence).

47. *LaFleur*, 414 U.S. at 648–49.

48. *Id.* at 649.

49. *See id.* (asserting that, "[t]o the extent that the three-month provision reflects the school board's thinking that no mother is fit to return until that point in time, it suffers from the same constitutional deficiencies that plague the irrebuttable presumption in the termination rules.").

> It is clear that the factual hypothesis of such a presumption-that no mother is physically fit to return to work until her child reaches the age of three months-is neither necessarily nor universally true . . . . Of course, it may be that the Cleveland rule is based upon another theory[—]that new mothers are too busy with their children within the first three months to allow a return to work. Viewed in that light, the rule remains a conclusive presumption whose underlying factual assumptions can hardly be said to be universally valid.[50]

The school boards in *LaFleur* did not present arguments challenging the mental and/or emotional competency of pregnant teachers.[51] As to physical competency, the Court noted that medical experts on both sides agreed that taking pregnancy leave was an individual matter.[52] Likewise, modern science supports the conclusion that a woman's ability to perform job duties throughout the course of pregnancy—whether due to physical demand or otherwise—is an individual matter.[53]

B. *Socio-Cultural Aspects: The Archetypal Body of a Teacher*

Beyond the conceptualization of the ideal teacher as historically conceived by school boards and administrators of K-12 public schools, cultural theorists have argued that an archetypal body also exists in the realm of higher education.[54] A plethora of research and scholarship exists in the social sciences related to the "normal professor body."[55] The idea of the normal professor body is rooted in a finding that a "normal body" has been constructed by society.[56] Cultural theorists, Susan Bordo and Sandra Bartky, identify this construction as a white, able, heterosexual, middle-class male.[57] Claudia Mitchell and Sandra Weber are other theorists who have also argued that the "normal professor body" shares

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50. *Id.* at 650 n.15 (Internal citations omitted).

51. *See* LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184, 1186 (1972) (intending the three-month rule to protect the health of the mother and child).

52. ROSEMARY J. ERICKSON & RITA J. SIMON, THE USE OF SOCIAL SCIENCE DATA IN SUPREME COURT DECISIONS 104 (1998) (noting that matters concerning leave for maternity purposes is an individual choice).

53. *See generally Working During Pregnancy: Dos and Dont's*, MAYOCLINIC, http://www.mayoclinic.com/health/pregnancy/WL00035 (last visited Feb. 3, 2012) (discussing how pregnant women continue to work throughout the duration of their pregnancy).

54. *See generally* Christina Fisanick, *They Are Weighted with Authority: Fat Female Professors In Academic and Popular Cultures*, 17 FEMINIST TEACHER, no. 3, 2007 at 237, 239 (discussing the concept of the "normal professor body").

55. *See generally id.* (referencing various scholars and theorists who have argued that the "normal professor body" is the same as that of the "normal body" in society, that of a white, able, heterosexual, and thin male).

56. *See generally id.* (discussing cultural theorists' formulation of the "normal body").

57. *Id.*

the characteristics of the "normal body" in society, and that images of teachers in popular culture greatly influence students' and teachers' expectations of teachers.[58] A practical effect of students and teachers deriving images of teachers from popular culture is that the idealized images "form[ ] the background against which [teachers] struggle to clarify [their] professional identities."[59]

Writing about her experience in teaching as a "fat professor," Dr. Christina Fisanick ponders the "normal body" and concludes that "[i]ronically, it is also the body that can seemingly overcome its own embodiment and rise above the ghettoed locale occupied by those of us (women, people of color, people with disabilities, gays and lesbians, the aged, the fat) who are always already associated with the lived body."[60] In contrast, women are consistently linked with the body, a connection that bears negative associations, Fisanick argues, given Western cultures' negative attitude toward the body.[61] As Professor Fisanick pondered, I too here explore the students' and colleagues' who observed my pregnant body affected my relationships with students and peers at the law school and, if so, the extent of the (negative) consequences springing from their associations with my body.[62]

At least one other scholarly work has attempted to address questions related to the impact of pregnancy on student perceptions of teaching effectiveness. In 1997, Dr. Phyllis Baker and Dr. Martha Copp explored the effect of students' gendered expectations, Dr. Baker's pregnancy, and the teaching of feminist course content on student end-of-course evaluations.[63] Professors Baker and Copp conclude that pregnancy may in fact "diminish women professors' good standing in the classroom" and that gender and pregnancy can "serve as potential and powerful liabilities" in the classroom.[64] More specifically, Baker and Copp state that "[b]ecause

58. *See id.* (noting that cultural theorists such as Claudia Mitchell, Sandra Weber and Magda Lewis have argued that the "normal professor body" shares the same characteristics as the "normal body" in society and that most depictions of the "normal professor body" are "white, male, middle-class, middle-aged, able, heterosexual and thin.").

59. *Id.*

60. *Id.* Fisanick recognizes that male academics obviously have bodies, but that "in academic culture, as in Western culture in general, men are perceived as being unfettered by the body" with the limited exceptions of male bodies (i.e. homosexuals, disabled, minority) that are not granted this "right." *Id.*

61. *See id.* at 240–41 (discussing Western culture's "binary" view of the body and mind, where the body is seen to be "a weak albatross holding back the mind from its highest potential" and that academia and society "has steadily rejected the body in favor of the mind.").

62. *Id.* at 242.

63. Baker & Copp, *supra* note 9, at 29.

64. *Id.* at 30–31.

many people stereotype pregnant women as emotionally unbalanced and physically uncomfortable, students might assume that a pregnant professor is easily agitated, rude, and sickly."[65] In their study, Baker and Copp argue that a combination of gendered expectations, feminist course content,[66] and pregnancy "may produce strong reactions in students and lead them to view their woman professor as deviant. . . . [and] give their professor negative evaluations as a way to punish her for violating their gendered expectations."[67]

As noted, the *LaFleur* pregnancy-related teacher employment termination policies ceased to exist in the 1970's.[68] Dr. Baker and Dr. Copp's study was published in 1997. The study reflected on Dr. Baker's pregnancy occurring in 1992.[69] Twenty years have passed since Dr. Baker's experiences, forty years since the days of *LaFleur*. Given the inroads that women have made in academia in the last twenty years,[70] it could be assumed that the reactions that some of Dr. Baker's students exhibited as a result of her pregnancy would be a thing of the past; that a 1997 study on the effect of pregnancy in the classroom would no longer be "good science" or accurately predict the reaction of students to a pregnant law professor in 2012. Unfortunately, my research notes the similarities between my experience as a pregnant teacher and Dr. Baker's. Dr. Baker and Dr. Copp's findings related to student-teacher dynamics throughout Dr. Baker's pregnancy will be incorporated in Part III, where I present the findings of my recent experience inside and outside the classroom as a pregnant law professor.

III. My Pregnancy Experience: Background and Setting

I teach a yearlong six-credit Contracts course at Phoenix School of Law (PSL) to first-year students. This means that for the large part, the students in the fall semester contracts course will be my students in the spring semester for the continuation of the course of study. PSL has been recognized nationally for its diverse student population and its commitment to recruit racially and ethnically diverse candidates for admission

65. *Id.* at 30.

66. Fisanick, *supra* note 54, at 247. Although this work explores the effect of pregnancy and gendered expectations in the law school setting and in the seemingly genderless first-year Contracts curriculum, as Dr. Fisanick notes, "[professors] have values and interests that we express to our students; no pedagogy is value-free." *Id.*

67. Baker & Copp, *supra* note 9, at 30.

68. *See generally* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (discussing maternity leave regulations in the 1970s).

69. Baker & Copp, *supra* note 9, at 30.

70. *Id.*

who are underrepresented in legal education.[71] PSL students are also geographically diverse with about 50% residing out-of-state.[72] The students enrolled in my courses with whom I interacted while I was pregnant were representative of an entering class made up of 31% of students of color and about 50% out-of-state students.[73] The average age of the 2011 entering student at PSL is twenty-eight.[74] In addition to the racial and ethnic diversity of the student body, students represent a variety of political, religious and, cultural perspectives.[75] The law faculty and Phoenix School of Law administration emphasize professionalism throughout the curriculum and often emphasize standards of professionalism and collegiality in their interactions with students. Since at least 2009, the new student orientation program includes a mandatory professionalism component. Students are generally respectful and friendly to the law faculty.

My pregnancy with my third child, Corbin,[76] spanned practically the entire 2011-2012 academic year. During that year, I taught two first-year

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71. Phoenix School of Law was awarded the 2011 Law School Admissions Council's Diversity Matters Award. The award is given to a law school displaying a high level of outreach to racially and ethnically diverse students. *See Phoenix Law Honored as Top Law School in US for Diversity*, PHOENIX SCH. OF LAW (June 6, 2011), http://www.phoenixlaw.edu/about/default.asp?PageID=149&ID=473 (showing the law school's commitment to and excellence in recruiting a diverse student body with "diverse" meaning "underrepresented minority candidates"). Phoenix School of Law's diversity is evidenced by the following statistics: students of color made up thirty-one percent of the Fall 2010 entering class, 40% of the Spring 2011 class, 33% of the Fall 2011 entering class, 42% of the Spring 2012 class and 46% of the Fall 2012 entering class. *Id.*; *Phoenix Law Admissions: Student Body Breakdown*, PHOENIX SCH. OF LAW, http://www.phoenixlaw.edu/default.asp?PageID=363 (last visited on Jan. 27, 2013); Admissions, PHOENIX SCH. OF LAW, http://www.phoenixlaw.edu/admissions/ (last visited on Jan. 27, 2013).

72. *See* E-mail from KA from the Admissions Department at Phoenix School of Law to staff writer (Jan. 29, 2013, 6:13 PM) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (confirming the aforementioned statistics of diversity within the student body at Phoenix School of Law); *see also* Admissions, PHOENIX SCHOOL OF LAW, http://www.phoenixlaw.edu/admissions (last visited on Jan. 27, 2013) (stating that the entering students for the Fall 2012 class, came from thirty-seven other states).

73. *See Phoenix Law Honored as Top Law School in US for Diversity*, PHOENIX SCH. OF LAW (June 6, 2011), http://www.phoenixlaw.edu/about/default.asp?PageID=149&ID=473 (explaining that youth of color made up thirty-one percent of the entering class for 2011); *see also* E-mail from KA, *supra* note 72.

74. *See* E-mail from Jasmine Crowe from the Admissions Department at Phoenix School of Law (Sept. 14, 2012, 18:46 CST) (on file with author) (confirming the statistics discussed above).

75. *See* Jamaal Abdul-Alim, *Survey Reveals Depth of Religious, Political Diversity [A]mong Millennials*, DIVERSE: ISSUES IN HIGHER EDUC. (Aug. 8, 2012), http://diverseeducation.com/article/17279/ (discussing high religious and political diversity among "college-age millennials").

76. For the purpose of confidentiality, names have been changed.

sections of approximately ninety students per semester. Over the course of the first semester, at least a few students expressed curiosity about my slight weight gain over the course of the first semester.[77] However, it was not until returning to campus for the second semester of Contracts that I appeared noticeably pregnant. Since Corbin's arrival was not anticipated to occur until after classes and exams were administered, I did not anticipate my pregnancy would interfere with my teaching duties. I decided that I would not share details about my pregnancy with the classes. My assessment was that my personal physical state and the birth of my son was not relevant to the course of study and, therefore, should not be addressed in class. To me, non-disclosure was the professional thing to do.

A. *Atypical Student Interactions*[78]

The majority of my face-to-face interactions with students throughout the year of my pregnancy were positive. Interestingly, however, the nature of some student interactions changed in character as I became visibly pregnant. Very early on in the spring semester, students approached me with several personal questions and remarks. Some comments were seemingly innocuous in nature—others less so. For example, several students signaled concern about my (presumed) caffeine intake when they observed my drinking out of insulated to-go paper cups. Less comfortable interactions included one student asking me about my family planning and the timing of my pregnancy a minute or two before the start of class, with several students gathered at the podium. Another student, before the start of class, commented (not asked) about my *not* coming back to teach in the fall after Corbin's birth. I had every intention of returning to work in the fall. One student even shared that several students in one section formed an email exchange to comment about my expanding shape. I was uncomfortable in each of these atypical interactions. These types of comments never presented before, nor did I indicate to my students that they were invited. My discomfort in these interactions would

77. Perhaps the biggest shock was the fact that students felt so free to share—unsolicited—their insights with me about such things as personal as weight gain and diet.

78. Students at PSL are often informed of PSL professors' "open-door policy." That is, the culture at PSL is one that encourages student engagement with the course material—and coincidently, their law professor—outside of the classroom. For this reason, students and their professors often find opportunities to relate to one another outside of formal class discussion. For example, it is not unusual for large percentages of students enrolled in a given class to seek professors out for office hour discourse. In my experience, my interactions with students during these more casual meetings are pleasant, professional, and friendly. In regard to class-time, students for the most part present themselves and their ideas in a professional, kind, and thoughtful manner.

cause me to freeze and stare back with an uneasy, fraught smile each time.

Not all comments that alluded to my pregnancy were intrusive or difficult to field. Some students, apparently concerned about whether my pregnancy might cause a disruption in their course of study, cleared their doubts in neutral, non-intrusive ways. When asked directly by students in one-on-one settings, "Will you be with us all semester?" I responded directly in the affirmative. I surmised that the question was asked out of concern that I would not be present to teach the course to full term. Thus, several students voiced their pregnancy-related concerns to me directly during that spring semester. However, at least one student reserved their concerns and opinions until nothing could be done to address them: in the anonymous end-of-course teaching rating.[79]

The following, here reproduced in its entirety and without editing,[80] is one such evaluation by an anonymous student:[81]

> Professor Iussa is pregnant, I get it. I understand that it is her body, and she may not want to share the details of the pregnancy with our class. However, since I am paying for her as an instructor I think I deserve to know if she is going to be able to finish out the class, or even be able to grade the exam. One of the things Phoenix School of Law and Professor Iussa liked to talk about is professionalism by the students, and by practicing lawyers. Professor Iussa was visibly pregnant from February on. I found it highly unprofessional for Professor Iussa not to address how her pregnancy would impact the class. We are paying for her service as a Professor, but she never even brought up the subject. I went through this entire semester not knowing if another professor would have to step-in and finish the class. I still don't know at the time I write this feedback if Professor Iussa will be grading our exams or not. The rumor around class (since she hasn't addressed it, my only knowledge is rumors) is that she is due to give birth in early June. This is when she will be grading our final exams. Is she going to grade the exams, or will someone else grade the exams? If she will grade the exams it will [sic] likely she will be in at least a lot of pain, and possibly be moody, irritable

79. Anonymous student teaching ratings are distributed in the last week of class. Related to the subject classes, I taught the students to the last class and gave a subsequent review session the week after the last day of class.

80. The text of the teaching rating as quoted is presented as submitted by the student. The text is intentionally not edited to correct for typographic or grammatical mistakes to preserve the tone and integrity of the comments. Teaching ratings referenced herein are on file with the author and available upon request.

81. Hereinafter, I refer to the student that authored the referenced teaching rating exemplar as "student-rater."

> or grumpy while grading the exams. I would be, if I gave birth during grading. However, I don't know if she will be or not. I don't know if another contracts professor will be grading our exams. The fact that Professor Iussa's pregnancy was not brought up once this semester is very unprofessional. This is something that impacts each and every one of her students. She does not have to give out the details of her pregnancy, but she should tell each of her students how it will impact them as students. During talks about professionalism this semester, I thought about Professor Iussa not telling students information that will affect 50% of their grade.

The language that the student-rater chooses to use to communicate their frustration, particularly the phrases "it is her body" and "I deserve to know" combined with the airing of unsupportable presumptions take me back to 1972[82] and 1974[83] respectively.

Upon receiving the above-quoted comments from my teaching rating that spring semester, I reflected on whether the perceptions and frustrations voiced therein could be viewed as uncharacteristic of the views of my students that semester. If the comments represented but an aberrant view shared by no other students, filing it away without much further thought might be appropriate. However, it became less likely that the comments voiced anomalous views considering the new themes that surfaced among the negative remarks in my teaching ratings that spring semester coupled with the occurrence of atypical face-to-face interactions that I experienced throughout the semester.

That I, as a visibly pregnant professor, was perceived as unsuitably emotional to properly conduct grading was not limited to one student-rater. In reviewing my student teaching ratings[84] for the semester in which I was visibly pregnant, I noticed a never-before-seen theme surface

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82. *See generally* Roe v. Wade, 410 U.S. 113 (1973) (discussing the landmark U.S. Supreme Court decision addressing reproductive rights of women).

83. *See* Brief for Petitioner-Appellant at 1188, LaFleur v. Cleveland Bd. of Educ., 4465 F.2d 1184 (6th Cir. 1972) (insisting that pregnant teachers are less physically able to cope with daily teaching activities than their non-pregnant counterparts); *Qatar School Bans Teachers From Getting Pregnant to Avoid Negative Effects on their Performance*, MUSLIMSDEBATE, http://www.muslimsdebate.com/n.prp?nid=5027 (last visited Jan. 27, 2013) (highlighting how discrimination against pregnant teachers is a an international epidemic). *But cf. Currently Pregnant Teachers*, CIRCLE OF MOMS, http://www.circleofmoms.com/moms-that-are-teachers/currently-pregnant-teachers-513372# (last visited Jan. 27, 2013) (providing a discussion forum for teachers to discuss significant on-the-job obstacles that come with pregnancy).

84. There are three parts to the Teacher Rating System instated at PSL: Part I asks students whether the professor provided a course syllabus in the first week of class, Part II presents students with fourteen questions asking them to rate a various array of learning experiences via the use of a Likert scale (1–5, with 1 denoting students "strongly disagree"

in the negative student comments for the two sections: allegations of professor bias in the grading process. I confirmed that I never before received negative comments from students alleging bias[85] or unfair grading practices in the six courses of first-year contracts classes that I taught before the semester of my visible pregnancy.[86] I then undertook to confirm whether, in fact, my overall teaching ratings that spring semester were impacted by perceived bias and unfairness. Also, although I have before received negative comments related to teaching methods by students in past semesters, I sought to determine whether my pregnancy impacted ratings related to teaching effectiveness that spring semester. To do so, I compared both the quantitative and qualitative aspects of my teaching ratings for the subject fall (not visibly pregnant) and spring (visibly pregnant) semesters. As noted, the students enrolled in the spring courses were largely the same as those enrolled in the first-semester Contracts course.[87]

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and 5 denoting they "strongly agree"), and Part III provides space for optional student commentary as they relate to the aforementioned questions.

85. *I Don't Think I'm Biased'*, TEACHING TOLERANCE (2010), http://www.tolerance.org/magazine/number-37-spring-2010/feature/i-don-t-think-i-m-biased (exploring the idea that student-centered instruction involving a varied array of educational opportunities affirms a teacher's commitment to social justice for all students and not just a select few).

86. To confirm this fact, my research assistant and I voluntarily reviewed teaching ratings that I received for four previous first-year contracts courses taught at PSL in their entirety. The only bias comment that was previously aired in course ratings was a comment that "[s]he seemed especially harsh towards women" and that was in the context of answering student questions and not perceived bias in grading. The student teaching ratings discussed herein are on file with the author and available upon request. Gender bias is widely discussed in academia. *See also* Kathryn Scantlebury, *Gender Bias In Teaching*, EDUCATION, http://www.education.com/reference/article/gender-bias-in-teaching/ (last visited Jan. 27, 2013).

> Gender bias occurs with people making assumptions regarding behaviors, abilities or preferences of others based upon their gender. Because there are strong gender role stereotypes for masculinity and femininity, students who do not match them can encounter problems with teacher and with their peers. For example, the expectation is that boys naturally exhibit boisterous, unruly behavior, are academically able, rational, and socially uncommunicative, whereas girls are quiet, polite, and studious. Girls are also expected to possess better social skills than boys and to excel at reading and the language arts. So girls who present discipline problems for teachers, or quiet, studious boys, may encounter a lack of understanding from peers and teachers. Within the classroom, these biases unfold in students' practices and teachers' acceptance of certain behaviors from one student or another based upon the students' gender.

Id.

87. *See Phoenix Law Admissions: Student Body Breakdown*, PHOENIX SCH. OF LAW, http://www.phoenixlaw.edu/default.asp?PageID=363 (last visited Feb. 3. 2013) (showing that the enrollment rates for Fall 2011 and Spring 2012 were comparable).

Overall, I received ten negative comments alleging bias on my part and unfairness in my grading practices the semester of my visible pregnancy.[88] Several of the comments alleging bias were particularly scathing in tone. For example, in response to the question "What has the professor done especially well in teaching this course?"[89] One student remarked:

> She assigned 50 percent of total grade to class participation and an assignment [sic] which was graded without any SGN. This means that she had control over students' final grade. it [sic] is [sic] possible violation of professors' handbook and even if it is not a violation, still it should be prevented by school [sic] due to her discriminating attitude toward students. This much arbitrary power over students' final grade [sic] was used as a kind of exercising [sic] control over students' [sic] to show them that she could punish them if they ask [sic] too many question [sic] or give bad feedback on her method of teaching.[90]

The quantitative portions of the spring semester teaching ratings also revealed a general belief that I did not articulate grading criteria clearly to students that spring semester. In fact, the average rating for the articulation of clear grading criteria decreased for each class; from a total possible score of 5, my average rating was 3.51 (down from 3.6) for one section and 3.87 (down from 4.21) for the other section.[91]

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88. *But see* Student Evaluations on Class Climate for Professor Ilya Iussa's Contracts II Course (June 23, 2012) (on file with author) (demonstrating a contradiction in the stream of negativity in stating that "[t]he professor was fair in the way the points were distributed in determining the final grade of the course."). This particular piece of feedback was quite intriguing because it revealed the possibility that my objectivity or lack thereof was a topic of discussion in an out of class forum and that this student was laying a substantive foundation in my defense.

89. *Id.*

90. *See id.* (quoting portion from a student's evaluation of the Contracts II course. It is worth nothing that in the referenced course in the semester of my visible pregnancy, 10% of a student's grade for the course was attributable to the quality and level of their student "engagement" with the course material; 40% of the course grade is attributable to an extensive contract negotiation and drafting project that is completed by students over the course of several weeks. It is not a violation of PSL policy to reserve up to 50% of points towards a final course grade on anonymous or non-anonymous assessments external to the final exam. It should also be noted that all points earned by students for pre-final assessments must be submitted to the PSL registrar prior to the administration of the final exam. It is also PSL policy not to release anonymous student ratings to professors until after final exam points and final course grades are submitted to the registrar. Both the final exams and the final letter grades assigned to each student are reviewed and processed by the PSL professor using anonymous student indictor codes as to protect the identities of students).

91. *See* Profiles of Students' Average Ratings of Professor Ilya Iussa's Contracts II Course (June 13, 2011 & June 23, 2012) (on file with author) (showing a decrease in the

A study of the quantitative portions of my teaching ratings the semester of my visible pregnancy also revealed unexpected results. As alluded to above, I expected my second semester teaching ratings to be far superior overall to first semester. This expectation was based first on the fact that prior students have indicated that the material in the second semester of contracts is more interesting and approachable, and the fact that I incorporate a large capstone experiential exercise that students indicate is a highlight of the contacts year. The experiential project has students take on the role of attorneys and represent fictitious (but live) clients in a contract negotiation and drafting project. Second, while I tend to receive intensely negative ratings related to my perceived "harsh" grading and "cold," "intimidating," and "rude" personal traits, many students in prior classes have indicated in their end-of-year course teaching ratings that they have found me to be more "personable," "caring," and "kind" in the second semester.[92] Third, I expected my teaching ratings to increase the semester of my visible pregnancy based on the fact that my teaching ratings increased significantly in the second semester of contracts in the previous two instances in which I taught the yearlong course.

For comparison, in one previous year-long contracts course incorporating the same variety of assessments, exercises, grading practices, and teaching methods my average teaching rating (across all quantitative assessment categories) rose from a score of 3.07 in the first semester to 3.84 in the second semester; in another similar previous year-long course my average teaching rating rose from 3.67 in the first semester to 4.18 in the second semester.[93] Thus, based on my prior record and after improving the course in several important respects—improved organization of the capstone project, widened access to their fictitious (but real) clients through Facebook dialogue and a new (fake) client website, and development of additional test-taking study tools and questions, I expected teaching ratings to similarly increase significantly that second semester.

Indeed, aside from these noted improvements to the course, the students enrolled in my class during the course of my pregnancy experienced

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average rating for clearly communication grading criteria to students from 2011 to 2012. This is opposed to the trend in my ratings for the articulation of grading criteria in two previous year-long contracts courses with similar projects and grading structure that saw upward trends in this respect the second semester of contracts as compared to the first semester).

92. *See generally* Deborah J. Merritt, *Bias, The Brain, and Student Evaluations of Teaching*, 82 ST. JOHN'S L. REV. 235, 261, 266–67 (2008) (discussing the influence of gendered expectations in student course evaluations in which female professors are described as non-authoritative, rude, and uncaring).

93. *See* Profile of Students' Average Ratings, *supra* note 91 (citing the final average scores at the end of the second semester as 3.84 in 2011 and 4.18 in 2012).

a nearly identical course of study as the previous contracts students save one aspect: my visible pregnancy. I was surprised to discover however, that my average teaching ratings actually declined the semester of my visible pregnancy for one section where my average teaching rating fell from 4.03 in the first semester to 3.79 in the second semester. In the other section my average teaching rating remained relatively static, averaging 3.59 in the first semester to 3.62 in the second semester.[94] Thus, my class-wide teaching ratings reveal that my students that spring semester generally exhibited less confidence in my ability to remain fair and objective and rated my teaching performance overall as less competent.

Dr. Baker experienced similar downward trends in her teaching ratings for the large-lecture style course that she taught while pregnant. In the Baker and Copp study, they found that Dr. Baker experienced significantly increased negative comments alleging bias, "male bashing," and rudeness in the semester in which she taught while in late-term pregnancy.[95] Similar to my negative comments in the semester of my visible pregnancy, Baker and Copp found that many of the negative comments that Dr. Baker received displayed a hateful tone marked with "sharp disapproval" which was qualitatively different than in the previous instance in which she taught the same course to a similarly large class.[96] One student commented, "I feel Dr. Baker was rude at times, constantly a [sic] ego maniac, a definite [sic] male basher."[97] Baker and Copp contended that several of these students believed that the source of rudeness was Dr. Baker's pregnancy.[98] They reference the two following quotations to demonstrate this assertion: "I feel Dr. Baker was very rude and negative to all of her students. I feel you had PMS during your pregnancy" and "When I had interactions with Dr. Baker she was rude. She yelled at me for answering the way I did on a test. I don't think she should have been teaching while pregnant because she was moody and crabby."[99] Baker and Copp noted at least one instance in which a student directly correlated perceived teaching competency to Baker's pregnancy: "I think Dr.

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94. *See id.* (showing the final average scores at the end of the second semester as 3.79).

95. *See* Baker & Copp, *supra* note 9, at 37 (noting that in the semester of her visible pregnancy, "[t]wenty-two of the 25 negative comments (88% of the negative comments and 38% of all comments) called Dr. Baker biased and a male basher or claimed that she was rude.").

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* As a third example, one student noted that "I think Dr. Baker was irritable because of her pregnancy and this effected her teaching ability and her effectiveness in class." *Id.*

Baker was irritable because of her pregnancy and this affected her teaching ability and her effectiveness in class."[100]

Significantly, and similar to my experience, Baker and Copp note that the negative comments quoted above "came as a surprise to Dr. Baker" and they concluded that indeed the students enrolled in Dr. Baker's large course the semester of her visible pregnancy "perceived Dr. Baker in a dramatically different light than others did in previous semesters."[101] They go on to conclude that "[b]ecause these students mentioned Dr. Baker's pregnancy in their claims that she was rude and crabby, we assume that they held stereotypical beliefs about pregnancy—that pregnancy is a time of emotional upheaval and physical discomfort[.]"[102]

In sum and in reference to the above-noted teaching rating exemplar, my failure to fulfill gendered expectations of a female and pregnant professor during the course of my pregnancy may have produced a strong emotional reaction in this student-rater leading him or her to view my actions and pedagogical decisions as inappropriate and "deviant."[103] Thus, the highly charged emotions of the student-rater as revealed in the noted teaching rating exemplar may have led him or her to "punish [me] for violating their gendered expectations" by giving a negative teaching rating.[104]

B. *Reflecting on the Source of the Student-Rater Criticisms*

Ultimately, teachers, including law professors, strive to impart both knowledge and understanding in students. To reach students, it may become necessary to attempt to understand where students are coming from and identify the biases they hold that may get in the way of learning.[105] More so, as teachers preparing students who will enter a profession that values evidence-based argumentation and decision-making, we play a role in training students to identify and control bias and stereo-

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100. *Id.* Baker and Copp attributed their findings to a combination of pregnancy, gendered expectations held by the students, which are unfulfilled by the professor, as well as feminist course content. I do not deliver feminist content on my Contracts courses. Yet, given my eerily similar experiences with negative student reactions in the semester of my visible pregnancy, I argue that the two factors shared by Dr. Baker and myself—namely, pregnancy and the effect of unfulfilled gendered expectations—may in fact be the principal reasons leading to the identified negative student reactions.

101. *Id.*

102. *Id.*

103. *Id.* at 30.

104. *Id.*

105. *See generally* Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up Is Hard To Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 1–57 (2010) (discussing the dynamics of race, gender, and sexual orientation and their implications in the law school classroom).

types in their way of thinking about particular issues and problems. In furtherance of this goal, the following is my reflection on the opinions and perspective that the comment by the student-rater reveals.

1. We held different views of what constituted professional conduct.

The student-rater expected that I address my pregnancy with the class, as evidenced by the critique,

> I understand that it is her body, and she may not want to share the details of the pregnancy with our class. However, since I am paying for her as an instructor I think I deserve to know if she is going to be able to finish out the class, or even be able to grade the exam.[106]

The student-rater also criticized the professionalism displayed by not fulfilling this expectation by also stating, "I found it highly unprofessional for Professor Iussa not to address how her pregnancy would impact the class. We are paying for her service as a Professor, but she never even brought up the subject."[107] It appears from this language that the student-rater adopts the modern notion of the higher education student as a customer.[108] As I follow the logic of the comments, since the student (indirectly) pays my salary, I should have relinquished my privacy interests in keeping the details of my pregnancy personal and should disclose them because the student "deserve[s] to know."[109] Thus, the context of the student's professionalism standard by which the student-rater judged my conduct was the student-as-a-customer and teacher-as-a-service-provider relationship. It follows to the student then that "[t]he fact that Professor Iussa's pregnancy was not brought up once this semester is very unprofessional."[110]

The professionalism standard stated in my course syllabus and modeled and enforced in the classroom, was one akin to a court of law or formal

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106. Student Evaluations on Class Climate, *supra* note 88.

107. *Id.*

108. *See* Frank Donoghue, *Should Student Evaluations Be Anonymous?*, THE CHRON. OF HIGHER EDUC. (Aug. 7, 2012, 12:01 PM), http://chronicle.com/blogs/innovations/should-student-evalutions-be-anonymous/33905?cid=pm&utm_source=pm&utm_medium=en (stating a troubling development about the modern university is "the almost fully adopted notion of the student as customer."); *see also* Richard Arum & Josipa Roksa, *Your So-Called Education*, N.Y. TIMES, May 14, 2011, http://www.nytimes.com/2011/05/15/opinion/15arum.html?_r=0 (analogizing students to consumers and discussing the negative impact of this reasoning on collegiate education); Wasson & Tyler, *supra* note 8, at 1309 (discussing factors which affect negative student ratings, including metacognitive deficiencies and definitive factors of professors).

109. Student Evaluations on Class Climate, *supra* note 88.

110. *Id.*

business meeting.[111] In fact, I thought about whether to bring up my pregnancy with my students that spring semester. Upon deliberation, I reasoned it would be superfluous to disclose something the students could see for themselves, and determined it unprofessional to take up class time discussing something irrelevant to the course material.[112] My "work-product," I reasoned, would not be negatively impacted by the pregnancy. In my prior professional life, both practicing law in the United States and abroad, and in private law firm and in-house settings, personal details were kept out of professional interactions. Personal details were shared only with those colleagues with whom friendships developed—and only outside business interactions and the workplace. So long as work was not impacted, my supervisors indicated they would rather not receive information about medical or personal appointments or conditions. Thus, I established the same professional life parameters in the classroom, and vigilantly safeguarded class time to be dedicated—to the greatest extent possible—to matters and issues relevant to the course of study.

Commenting on the bounds of professional content and conduct in the law school, Professors Wasson and Tyler reference a student who commented in their anonymous end-of-course teaching rating, stated the students wanted a professor who was "not pregnant."[113] Professors Wasson and Tyler declare "[t]his comment goes beyond disrespectful gender stereotyping. By passing judgment on the professor's personal life and intruding on her privacy, the student demonstrates a complete lack of awareness of appropriate professional boundaries."[114]

The distance between the student-rater's professional standards and my professional standards could be a product of differing generational

111. *See* Course Syllabus (Spring 2012) (on file with the author).

112. As mentioned above, Corbin was not due until some weeks after the end of the semester, and I did not anticipate missing class due to my pregnancy. This perspective is shared by at least one other teacher, an anecdote I would like to forget. *Fat Female Professors and Student Evaluations of Teaching*, FEMINIST PHILOSOPHERS (Mar. 1, 2010, 4:52 PM), http://feministphilosophers.wordpress.com/2010/03/01/fate-female-professors-and-student-evaluations-of-teaching/. H.E. Baber, while teaching during her pregnancy, said nothing to her class about her pregnancy, in part because she did not think it needed to be announced, but also because she felt it irrelevant to the course. *Id.* One of her students, however, went to the Dean to express concern about her recent weight gain, fearing something may be wrong. *Id.* The Dean called the teacher in about the situation, and suggested addressing the pregnancy to the class. *Id.*

113. *See* Wasson & Tyler, *supra* note 8, at 1332 (detailing metacognitive deficiencies revealed in the study of law).

114. *Id.*

and cultural factors.[115] The so-called Facebook Generation or Generation F[116] is entering law school.[117] A defining characteristic of Generation F is its "willingness to divulge personal details on the Internet."[118] In contrast, a study of Facebook profiles found that as the age of the user increased the amount of personal information disclosed decreased.[119] In regard to ethnic culture, it is also not customary for people of Mexican heritage, like me, to divulge information of a personal or medical nature outside of their circles of intimacy.[120]

2. According to the student, pregnant women are intrinsically moody, irritable and/or grumpy and in pain; and, therefore, even though I remained as their professor, my pregnant condition impacted them negatively.

The underlying premise of the student-rater is that my pregnancy impacted my students negatively. The student states,

> The fact that Professor Iussa's pregnancy was not brought up once this semester is very unprofessional. This is something that impacts each and every one of her students. She does not have to give out

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115. I am hypothesizing on the potential differences because the evaluations are anonymous, therefore, I do not know the age or ethnic heritage of any student.

116. *See What is the Facebook Generation*, WISE GEEK, http://www.wisegeek.com/what-is-the-facebook-generation.htm (last visited Feb. 11, 2013) (the term "Facebook Generation" refers to those growing up in a world of increased on-line social networking).

117. *See* Matt Leichter, *What the Numbers Don't Say: Law School Applicants Are Getting Older, Not Dumber*, THE AMLAW DAILY (Apr. 19, 2012, 3:57 PM), http://amlawdaily.typepad.com/amlawdaily/2012/04/what-the-numbers-dont-say-law-school-applicants-are-getting-older-not-dumber.html (illustrating the age demographics of individuals entering law school from 2005–2009, with applicants between the ages twenty-two and twenty-four making up nearly 50% of entering classes).

118. Louise Story & Brad Stone, *Facebook Retreats on Online Tracking*, N.Y. TIMES, Nov. 30, 2007, http://www.nytimes.com/2007/11/30/technology/30face.html.

119. *See* Amanda Nosko, Eileen Wood, & Seija Molema, *All About Me: Disclosure in Online Social Networking Profiles: The Case of FACEBOOK*, 26 J. COMPUTERS IN HUM. BEHAV. 406, 406-18 (2010) (looking at 400 Facebook profiles and found that as age increased, the amount of personal information in profiles decreased.)

120. Professionals of Mexican heritage display a certain level of formality in their business interactions and such personal matters are reserved for private life. For this and a variety of professional development reasons, the publishing of the information and details contained herein—including reference to interactions with students and peers alike—is a decision that was not taken lightly. When I came across the words of Robert S. Chang while researching this piece, however, I found a sense of conviction on which I now stand. Chang wrote to Adrienne D. Davis, "I'm glad that we are going public with [ ] our stories, because if we allow our shame to keep us silent, then the historical record will never include these stories, and it will be as if these things never happened, and law schools will never change." Chang & Davis, *supra* note 105, at 12.

> the details of her pregnancy, but she should tell each of her students how it will impact them as students.[121]

This is in contrast to my assessment, as discussed above, that my pregnancy did not impact them in any way. Classes would not be canceled nor rescheduled, no other professor would complete my duties, and I would be assessing their performance in the course from beginning to end.

Although the student-rater drafted their comments in the last week of class (with the knowledge that instruction had not been disrupted by my pregnancy) the student's comments are marked with a high level of emotion and expressed lingering concern about grading the final exam. While the student-rater expressed concern over the continuity of their learning in the subject rating passage, the remarks reveal that the student may in fact at some level find it preferable for another professor to step in to grade the exams.[122] The student ponders, "[i]f she will grade the exams it will [sic] likely she will be in at least a lot of pain, and possibly be moody, irritable or grumpy while grading the exams. I would be, if I gave birth during grading." In this way, the student perceives the pregnant professor as unsuitably emotional so as to interfere with her job duties.[123] This portion of the subject teaching rating anecdotally confirms Baker and Copp's contention that stereotypes about pregnant women "as emotionally unbalanced and physically uncomfortable" may lead to students assuming "that a pregnant professor is easily agitated, rude, and sickly" in the current-day law school setting.[124]

More so, the portion of the student-rater's comments musing on my level of grumpiness and pain is particularly troubling to me. This is be-

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121. Student Evaluations on Class Climate, *supra* note 88.

122. The logistics of the possibility of another professor grading the exams are interesting to me. I cannot imagine the conversation that I would have with a colleague to secure their assistance in grading nearly 180 final exams.

123. It is curious to note that even in the 1970s (as evidenced in the Supreme Court briefs) the school boards in the *LaFleur* decision did not advance the theory that women were emotionally or cognitively less capable to do their jobs—the modern day evaluation did however. The implication that a pregnant professor is emotionally or cognitively less capable to perform teaching duties is similar in nature to references that portray menstruation and its related pre-menstrual syndrome (PMS) side-effects as interfering with a woman's ability to make rational decisions. On this subject, the Teaching, a Project of The Southern Poverty Law Center observes that these types of stereotypical references—portraying women as over-sensitive, emotional, inconsistent, irrational, and angry—"are used to marginalize women and exclude them from particular job functions or decision-making roles." THE SOUTHERN POVERTY LAW CENTER, SPEAK UP AT SCHOOL: HOW TO RESPOND TO EVERYDAY PREJUDICE, BIAS AND STEREOTYPES 51, *available at* http://www.tolerance.org/speak-up-at-school (last visited Feb. 11, 2013) (on file with the author).

124. Baker & Copp, *supra* note 9, at 30.

cause I want to believe that stereotypical views of women, and pregnant women in particular, that operated to keep women out of the workforce and positions of authority and influence have receded in society in the last forty years since the *LaFleur*[125] policy reviewed by the Supreme Court in 1974.[126] The student-rater's beliefs that a professor, by virtue of her expectant state, is unsuitable to competently teach and assess law student performance is not unlike the stereotypical views held by the Cleveland School Board in *LaFleur* in support of mandatory early-leave maternity leave policies for K-12 teachers that were ultimately found to be unconstitutional by the Supreme Court.[127] Notably, the student-rater's comments reveal that at least for this student, students' stereotypical and ungrounded notions related to the ability of women to perform competently in the workplace might impact their assessment of law professor performance.[128]

3. There was a lack of trust in the student-teacher relationship—and the student was emotionally upset.

Trust is a hallmark of the legal professional community, rooted in our Model Rules for Professional Conduct.[129] Lawyers presume that colleagues and adversaries alike are competent to represent the interests of clients unless contrary evidence presents itself. If that is the case, then we are obligated to do something about it.[130] Simply put, lawyers trust that our peers are doing their job satisfactorily. Likewise, the values of trust and respect for diversity are core-values at PSL and are affirmed to stu-

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125. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 634–35 (1974)

126. *See generally* Robert J. O'Brien, *Persecution and Acceptance: The Strange History of Discrimination Against Married Women Teachers in West Virginia*, 56 W. VA. HIST. 56 (1997), *available at* http://www.wvculture.org/history/journal_wvh/wvh56-4.html (discussing school board policies discriminating against married women in West Virginia).

127. *See LaFleur*, 414 U.S. at 634–35 ("[W]e hold that the mandatory termination provisions of the Cleveland and Chesterfield County maternity regulations violate the Due Process Clause of the Fourteenth Amendment, because of their use of unwarranted conclusive presumptions that seriously burden the exercise of protected constitutional liberty.").

128. *See* Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 336 (1996) (citing Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. Legal Educ. 311, 313, 330-31 (1994) ("One major issue for women law faculty is the presumption of competence. A recent study reveals that 48% of all women students and seventy-three percent of minority women students believe that female professors, more than male professors, must prove their competence to their students.").

129. *See* MODEL RULES OF PROF'L CONDUCT PREAMBLE ("A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.").

130. *See generally id.* at R. 8.3 (reporting professional misconduct).

dents by faculty, staff, and administration beginning in orientation and reiterated in the Student Handbook.[131] Each matriculating student is required to sign the "Honor Code," and made aware of PSL's Statement of Diversity.[132] Apart from the fact that law school is a time where students prepare to enter a profession that is self-regulating, trust is important from a pedagogical perspective.[133] According to Professor Brookfield (Distinguished University Professor at the University of St. Thomas in Minneapolis-St. Paul, Minnesota), building trust as between students and teachers is essential for meaningful learning.[134] In his book related to building trust between teachers and students, Professor Brookfield identifies teacher credibility and authenticity from the perspective of the student as being among the characteristics that make teachers appear trustworthy.[135]

In the case of the student-rater, such trust—in me and in my ability to assess my competence to carry out the job and to act accordingly—was not present. Alternatively, my decision to not discuss my pregnancy with my students within a class setting was also in my mind, buttressed by my belief that students would raise concerns and questions about the course and its delivery directly to me in a professional manner. Upon inviting students to approach me with questions and concerns about both content and course logistics throughout the course, I trusted that my students would accept a certain level of responsibility to proactively raise issues of concern with me—and to do so before the end-of-course-rating. It was perhaps naïve to expect that all students would do so. I took it as positive proof that this was the case when students asked about my completing the semester and/or about my due date outside of class. Unfortunately, for the student-rater, this information did not make its way to him or her.

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131. *See* PHOENIX SCH. OF LAW, STUDENT HANDBOOK: HONOR CODE PURPOSE § 3.2.1 (last revised Aug. 6, 2012), *available at* http://www.phoenixlaw.edu/downloads/Student%20Handbook.pdf (stating in relevant part, "[w]e understand that honesty, integrity, and confidentiality are essential to the proper practice and law, and then when our study of the law begins, so does our obligation to the profession. The Code fosters personal and academic honesty, trust between members of the Phoenix Law community, and students' preparation to live under the legal profession's rules.").

132. *Id.* § 1.1.6.

133. *See* Rebecca Alber, *In Teachers We Trust: Can Kids Count on You?*, EDUTOPIA (Feb. 7, 2010), http://www.edutopia.org/trusting-relationships-teachers-students ("[I]n an interdependent relationship as the one a teacher has with his students, without trust, there is often only a stagnant environment.").

134. STEPHEN D. BROOKFIELD, THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST, AND RESPONSIVENESS IN THE CLASSROOM 55 (2006).

135. *See id.* at 56 ("These two clusters [of preferred teacher characteristics] are credibility and authenticity.").

The assumption that students will act proactively to address concerns about course delivery was not supportable.

C. *Missed Student-Teacher Outcomes*

Ultimately, for the student-rater, I was not the "ideal" law professor during that second semester of Contracts. As Professor Fisnick and Professors Baker and Copp contend in their respective noted works, a student's associations of the body of his or her female and pregnant professor may lead to negative consequences—including negative teaching ratings—for the professor.[136] My experiences as a pregnant law professor expand the reach of that socio-cultural phenomenon to the law school setting. In this way, the objective and evidence-based methods extolled in law school classrooms do not insulate pregnant law professors against socio-cultural biases and gendered expectations by which women are measured.[137] Neither does the prestige of the honored title "professor" shield female law faculty from the experiences common to women of every vocational stripe.[138]

More so, student-formed negative associations bear negative consequences for the student-learner as well. The dynamics discussed above as between the student-rater and me resulted in an environment where learning is thwarted. If not related to course content, the student-rater revealed in their teaching rating a mind-set closed to receiving instruction from me as it pertained to professionalism matters. The student shares, "[t]he fact that Professor Iussa's pregnancy was not brought up once this semester is very unprofessional . . . [d]uring talks about professionalism

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136. Fisanick, *supra* note 54, at 242; Baker & Copp, *supra* note 9, at 30 (noting a correlation between teaching styles and student evaluations. The more "gender-appropriate" teaching style utilized by the professor, the higher the student evaluation score).

137. The negative consequences discussed by Fisanick are not limited to pregnant law faculty. As noted above, negative associations may surface in classrooms taught by non-pregnant women and other diverse professors that do not appear to have the "normal professor body." *See* Wasson & Tyler, *supra* note 8, at 1319 n.72 (citing 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, 128 (2004)) (discussing evidence of bias against women in fields that are traditionally male-dominated, and a professor's opinion that some students "view women as less competent than men[,]" negatively affecting a woman's student ratings).

138. *See* Erika Christakis, *Why are Women Biased Against Other Women*, TIME (Oct. 4, 2012), http://ideas.time.com/2012/10/04/womens-inhumanity-to-women/ (noting that although more covert forms of gender biases have more or less disappeared in the American workplace, "subtler and more ingrained cognitive biases deeply rooted in our evolutionary and cultural past" have remained. For example, a recent psychological experiment revealed that senior science faculty from across the country were statistically more likely to rate the hypothetical resumes of male candidates higher than their hypothetical female counterparts with identical resumes).

this semester, I thought about Professor Iussa not telling students information that will affect . . . their grade."[139] As Dr. Brookfield notes in his work, the building of trust between a teacher and student is essential to developing a productive learning environment and the credibility of the teacher is key to making teachers more trustworthy in their students' estimation.[140]

D. *Atypical Interactions with Law Faculty Colleagues*

In regard to interactions with law faculty colleagues, several instances presented during the course of my visible pregnancy where conversation turned to pregnancy and family care giving responsibilities. The vast majority of these conversations were welcomed and very pleasant. My colleagues are kind and friendly and several took an interest in me, my experiences, and the lives of my family members during this time. Indeed, the faculty culture at PSL is one generally marked with the deepest levels of collegiality and mutual-respect.

Sprinkled among the friendly social conversation, however, I recall a handful of comments and opinions from peers related to whether pregnancy and caring for small children affected intellectual work-product and/or job performance and outcomes in the law school setting. Admittedly, opinions and (even casual) comments by my peers on this subject troubled me immediately. I wondered what to make of the comments. Did the comments represent merely fleeting thoughts or rather ingrained beliefs that would color the manner in which the quality and level of my contributions in the past year would be measured? These questions will be further explored.

IV. FAMILY-CAREER LIFE CHOICES AND THE LAW PROFESSOR

A. *In Legal Academia, Women Are (Allegedly) Capable of "Having It All"*

Recently, Dr. Anne-Marie Slaughter drew wide attention among women professionals when she proclaimed in an op-ed piece that women assuming high professional ranks while undertaking motherhood were superhuman, rich, or set their own schedules.[141] Dr. Slaughter made the

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139. *See* Student Evaluations on Class Climate, *supra* note 88 (stating that professor may "possibly be moody, irritable or grumpy").

140. BROOKFIELD, *supra* note 134, at 162.

141. Anne Marie Slaughter, *Why Women Still Can't Have it All*, THE ATLANTIC (2012), http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/ (explaining that while recent generations of women have been able to enjoy greater empowerment and access to higher-level positions, there remains a lack of discussion amongst women about the actual limitations associated with those new opportunities).

proclamation reflecting on her experiences as a mother of two teenage children and the first woman director of policy planning at the U.S. State Department. The op-ed was written upon the conclusion of a two-year term of government service.[142] In government service, Dr. Slaughter explained, she found herself "working long hours on someone else's schedule" as is typical for the vast majority of the working public.[143] Dr. Slaughter contrasted her experience of balancing both work and family—and that of the typical person—to her experience as an academic where she had the ability to set her own schedule most of the time, thereby allowing her to "still get the work done" and "be with [her] kids when [she] needed to be."[144] Dr. Slaughter thus concludes that "having it all, at least for me, depended almost entirely on what type of job I had. The flip side is the harder truth: having it all was not possible in many types of jobs, including high government office—at least not for very long."[145] According to Dr. Slaughter, the law professorship is a type of job where one can reach top levels of professional success while raising children well.[146]

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142. *Id.*

143. *Id.* (referencing other professional women that chose to step down from high-powered positions, Dr. Slaughter quoted Mary Matalin, former assistant to President George W. Bush and counselor to Vice President Dick Cheney: "Having control over your schedule is the only way that women who want to have a career and a family can make it work." Dr. Slaughter further explains that the decision for some to step down from positions of power in order to spend more time with family is often viewed as taboo and "unthinkable," leaving some women to refrain from entering into leadership positions that may force them to chose between family and career.).

144. *Id.*

145. *Id.*

146. This conclusion appears to be derived from her belief that setting one's own schedule is essential to balancing the demands of work and home successfully, a belief echoed by other former-government employees who opted to step down from powerful positions for family reasons. *Id.*

> Michele Flournoy stepped down after three years as undersecretary of defense for policy, the third-highest job in the department, to spend more time at home with her three children, two of whom are teenagers. Karen Hughes left her position as the counselor to President George W. Bush after a year and a half in Washington to go home to Texas for the sake of her family. Mary Matalin, who spent two years as an assistant to Bush and the counselor to Vice President Dick Cheney before stepping down to spend more time with her daughters, wrote: 'Having control over your schedule is the only way that women who want to have a career and a family can make it work.'

Id.

B. *It's Personal: Values and Consequences*

As Dr. Slaughter noted in her op-ed piece, women's choices related to career and family certainly produce personal and professional consequences for the individual.[147] Decisions related to work and family are based on values and circumstances personal to the individual. For example, a CEO of a company who does not exercise a right to take an extended leave following the birth of her child may choose to make arrangements to bring her child to work.[148] An eighth year associate at a large law firm who is up for a partnership may decide to forego an "out of office" automatic email notification and make herself available for work projects throughout the course of her maternity leave.[149] Other women—such as the working poor—may not be able to afford to take an unpaid leave from a job and may, for example, "choose" to return to work immediately following the birth of a child.[150] Each of these women, for varying and personal reasons, worked right up until the day of delivery and did not take a career "off-ramp."[151] The consequences of their

147. *See id.* (recalling a meeting with a female lawyer who observed female partners in her firm making immense sacrifices to rise professionally and quotes her as saying, "They take two years off when their kids are young but then work like crazy to get back on track professionally, which means that they see their kids when they are toddlers, but not teenagers, or really barely at all.").

148. *See* Melinda Henneberger, *Woo Hoo for Yahoo for Making Pregnant Marissa Mayer its New CEO*, WASH. POST BLOG (Jul. 17, 2012, 5:48 PM), http://www.washingtonpost.com/blogs/she-the-people/post/yahoo-for-yahoo-for-making-pregnant-marissa-mayer-its-new-ceo/2012/07/17/gJQAzY3srW_blog.html (discussing how Yahoo will be knocking out a wall to accommodate an adjoining nursery to new CEO Marissa Mayer's office).

149. Slaughter in her Atlantic articles floats that maybe the "having it all" problem is unique to women with means in a position to hire a nanny or have a partner that performs care-giving responsibilities for the family while the woman dedicates time to careers outside the home. *See* Slaughter, *supra* note 141 ("I am writing for my demographic—highly educated, well-off women who are privileged enough to have choices in the first place.").

150. Anushay Hossain, *German Family Minister Has 'Major Concern' About Mayer's Drive-By Maternity Leave*, FORBES MAG. BLOG (Aug. 2, 2012, 2:17 pm), http://www.forbes.com/sites/worldviews/2012/08/02/taking-your-time-german-official-weighs-in-on-mayers-maternity-leave/ ("Most women do not have access to the help, money, nannies, in short resources richer more powerful women do. Most women have kids and raise them all on their own.").

151. The term "off-ramp" as it pertains to women who voluntarily quit their jobs for a short period of time to assume full-time care-giving responsibilities was coined by Sylvia Ann Hewlett in her research related to the evidence of "female brain drain" in modern professional fields. *See* SYLVIA ANN HEWLETT, OFF-RAMPS AND ON-RAMPS: KEEPING TALENTED WOMEN ON THE ROAD TO SUCCESS xi (2007) (noting that women typically balance demanding familial responsibilities with professional aspirations based on finding meaning in their work).

decisions, presumably, should then fall largely on the personal side. In these examples, the consequences arising from decisions to dedicate oneself to jobs outside the home while raising young children are largely self-evident. Whether attorney or restaurant employee,[152] a working woman may potentially miss a child's first steps, dirty laundry may pile up, and she may arrive home from work after her child has been tucked in for the night. These consequences affect the working mother's personal and family-quality of life.

Presumably, as a law professor and former dean of Princeton's Woodrow Wilson School of Public and International Affairs with tenure, "having it all" for Dr. Slaughter goes beyond a paycheck and includes achieving promotion and tenure in the realm of academia.[153] In sum, to receive the benefits of choices made to invest in career, the mother law professor must ultimately be deemed worthy of promotion and tenure by her peers and the institution where she works. The recognition, acceptance and ultimate vote of one's peers is essential to achieving full professional strides in legal academia.[154] In my case, I feared from my experiences that the quality and depth of my contributions to students, scholarship and my institution would be interpreted by two opposing groups of peers—those who shared Dr. Slaughter's views on the possibility of attaining high levels of professional achievements alongside family commitments, and those who believed the two were mutually exclusive.

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152. This job-type comparison is not unintentional. At the outset of my research for this article, and certainly during the course of my pregnancy, I presumed that my academic pedigree and the title "esquire" or "professor" insulated a woman from facing bias or discrimination in the workplace. However, one of the conclusions towards which this article drives is that in regards to pregnancy discrimination, the law professor is no different than women working in a variety of positions and fields. That is the case, at least in Arizona where PSL is situated. A March 2012 recent local life-variety magazine article reported that, according to Mary Jo O'Neill, an Equal Employment Opportunity Commission (EEOC) attorney for the Phoenix District Office, "Arizona routinely leads the nation in pregnancy-discrimination complaints per capita" and that during the last three years, the number of pregnancy-discrimination claims filed in Arizona with the EEOC rose by nearly thirty percent. The article went on to report a 2011 EEOC suit against an Arizona restaurant alleged to having removed a pregnant employee from a Sunday shift during the football season, allegedly "because men didn't want to see pregnant women during Sunday football games" and another 2012 case where a Subway restaurant manager testified under oath in a 2012 employment discrimination case that he was instructed not to hire pregnant women. *See* Dolores Tropiano, *Pregnant Pause*, PHOENIX MAG., (Mar. 2012), http://www.phoenixmag.com/lifestyle/valley-news/201203/pregnant-pause/ (discussing the experiences of pregnant women in Arizona who faced discrimination from their employers).

153. *See* Slaughter, *supra* note 141 (describing her career titles before she went into government service).

154. Baker & Copp, *supra* note 9, at 29 (arguing that women in academia must satisfy the expectations of students, colleagues, and administration in order to be successful).

C. *Am I alone in my experiences?*

Are the doubts and experiences of one law professor compelling? Would I have to overcome perceptions by peers that my job performance was limited by my familial responsibilities come promotion season? Is my experience representative of other law faculty's experiences? These questions are difficult to answer due to the paucity of scholarship related to professors' patterns of work and family care giving, as well as the impact of pregnancy and care-giving on teaching and job performance assessments. As referenced above, there is record of at least one other law professor receiving negative student feedback in a teaching rating related to her pregnancy.[155] This article also highlighted Dr. Baker's experience teaching undergraduate students while pregnant and the negative reactions she received in her teaching performance ratings that were attributed to her pregnancy.[156] Also anecdotally, I have identified at least one other reference to a teacher in a university setting receiving comments from students in course ratings noting that her "pregnancy had been distracting for them, since it was the subject of much speculation throughout the semester."[157]

D. *Law Faculty Survey Results*

Due to the lack of documentation related to the experiences and perceptions of law faculty in this area, I decided to survey the experiences of my PSL colleagues.[158] Out of forty-seven fulltime PSL law faculty at the

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155. Wasson & Tyler, *supra* note 8, at 1305.

156. *See* Baker & Copp, *supra* note 9, at 30 (claiming that pregnant professors can lose good standing in the classroom because many people believe pregnant women are physically uncomfortable and emotionally unbalanced which can lead students to view their professors as deviant and punish them for violating gendered expectations. In Dr. Baker's case, data was compiled from three semesters during which she was pregnant and carried a child to term. Negative comments regarding her pregnancy increased as the pregnancy became more apparent. This resulted in comments such as "I don't think she should be teaching while pregnant because she was moody and crabby.").

157. *See Fat Female Professors and Student Evaluations of Teaching*, FEMINIST PHILOSOPHERS (Mar. 1, 2010, 4:52 PM) http://feministphilosophers.wordpress.com/2010/03/01/fate-female-professors-and-student-evaluations-of-teaching/ (noting that this professor did not announce her pregnancy to the class because she did not think it was relevant to teaching. Despite the fact that the pregnancy was not relevant, one student actually visited the Dean to discuss the professor's weight gain).

158. *See* SURVEYMONKEY, *supra* note 13 (including questions asked in the survey entitled "Survey of Law Faculty related to Career/Family Life Opportunities, Perspectives, and Decisions."). The Law Faculty Survey was administered electronically in August 2012. The survey responses were collected and tallied in a way that preserved the anonymity of each respondent. Certain survey questions included space for comments. Some pertinent comments are quoted herein. All complete survey responses with comments are on file with the author and may be requested by emailing the author at iiussa@phoenixlaw.edu.

time, thirty-one or 66% responded to the Law Faculty Survey; and of those respondents 61% (nineteen) were women and 39% of respondents (twelve) were men.[159] It should be noted that, given the preliminary nature of this study and small sample size, the following findings are for exploratory purposes only and are considered to be tentative.[160]

42% of survey respondents were current parents to minor children.[161] 26% of respondents added minor children to their families (all by pregnancy or the pregnancy of a partner) during the time that they had been employed as fulltime law faculty. Of these respondents, 50% were male and 50% female.[162] That means 13% of law faculty respondents (a total of four women professors) at PSL were pregnant while employed as law professors.[163] That represents 21% (four out of nineteen) of all women respondents.[164] Sixteen or 52% of respondents parented minor children during the time that they were employed as law faculty.[165] Of the thirteen who parented minor children as law faculty, ten, or 56%, indicated that they were not the primary care giver to their children.[166] Isolating for gender, of the eleven females who indicated that they had parented minor children while working as fulltime law faculty, four indicated that they were not the primary caregivers to their children at the time.[167] Therefore, 36% of female law professors, with minor children, surveyed did not act as the primary caregivers to their children while pursuing their academic careers.[168]

These findings are noteworthy for a few reasons. First, about one-half of my colleagues—both men and women—have been in a position to make family and work life choices as law professors.[169] More specific to the experiences highlighted in this article, one out of eight responding professors shared my experience, at one time, of being a pregnant law professor and mother to young children while employed in legal

159. *Id.* The surveyed individuals were members of the university's fulltime doctrinal and legal writing faculty. Please note that percentages referencing the survey findings are rounded to the nearest whole number.

160. *See generally Organizing Your Social Sciences Research Paper*, USC LIBRARIES, http://libguides.usc.edu/content.php?pid=83009&sid=818072 (last updated Feb. 11, 2013) (cautioning that exploratory studies with their generally small sample sizes should not be generalized).

161. SURVEYMONKEY, *supra* note 13.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *See id.* (examining the family and life choices of fellow PSL professors).

167. *See id.* (examining the family and life choices of fellow PSL professors).

168. *Id.*

169. *Id.*

academia.[170] This percentage, however, is not likely to represent an accurate estimate of the percentage of law professors that have experienced pregnancy while employed as fulltime law faculty due to the fact that women are disproportionately represented in the Law Faculty Survey findings, (as noted, 61% of respondents were women) as compared to the general fulltime professor population.[171] However, it may be apposite to extrapolate to the larger female professor population the finding that twenty-one percent of all women respondents experienced pregnancy at some point while employed as law professors.[172] That approximately one out of five female law professors may at one time encounter biased reactions from students resulting in negative teaching ratings related to pregnancy is not insignificant. Another finding that may suitably be extrapolated across the larger professor population is the finding that 36% percent of women law professors are not acting as the primary caregiver to their children.[173]

The survey asked faculty members whether they believed it is "feasible for fulltime law faculty parenting minor children to achieve outcomes in teaching, scholarship, and service to the institution similar in degree to non-parents of minor children?" In response, 74% indicated yes, 10% (three respondents) indicated no, and 16% had no opinion.[174] This is compared to 90% of respondents that answered in the affirmative and were current parents to minor children but not the primary caregivers.[175]

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170. *Id.*

171. *Compare id.* (indicating that 61.3% of the law faculty at Phoenix School of Law are female with 25.8% of these women having added a minor child to their family during the time in which they were fully employed as law faculty), *with 2008-2009 Association of American Law Schools Statistical Report on Law School Faculty and Candidates for Law Faculty Positions*, AALS, http://www.aals.org/statistics/2009dlt/new.html (last visited on Feb. 11, 2013) (according to the most recent statistics on law school faculty made available by the Association of American Law Schools (AALS) for 2008-2009, 37.3% of law professors were women).

172. *See* SURVEYMONKEY, *supra* note 13 (using the survey population to extrapolate certain findings to the larger law professor profession).

173. *Id.*

174. *Id.* Several respondents included comments explaining their answers to this question. *Id.* Those responding in the affirmative generally discussed that it was possible if sufficient support systems were available. *Id.* A couple of respondents answering in the affirmative, however, expressed doubt as to the sustainability of the endeavor; one such respondent states,

> [i]t is feasible because it is currently happening. However, it is a tremendous strain and may not be sustainable without structural changes and more support. I sometimes believe the ideal faculty member is expected to be celibate and childless without any significant responsibilities outside of the institution. That is not realistic and does not support [sic] efforts to create a diverse faculty.

Id.

175. *Id.*

The survey also asked faculty members whether they believed it is "feasible for pregnant fulltime law faculty to achieve outcomes in teaching, scholarship, and service to the institution similar in degree to non-pregnant peers?" In response, 74% indicated yes, with two respondents (6.5%) who indicated no and the rest had no opinion.[176] Interestingly, eight of the eighteen respondents that submitted comments related to this question characterized pregnancy as presenting an obstacle, physical toll, or special challenge to the law professor.[177]

The Law Faculty Survey also sought to investigate the areas in which faculty members identified as sacrificing when encountered with time constraints. To this end, the respondents were asked to select three areas among both work and family life activities that they "most often forego when faced with time pressures[.]" Of the activities, respondents currently parenting minor children identified the following three areas as the top relinquished activities: sleep (chosen at a rate of 54% by current parents to minor children), exercise and well-being activities (also chosen at a rate of 54% by current parents to minor children), and scholarship (chosen at a rate of 46%).[178] For the non-current parents of minor children respondents, the top three areas identified as being relinquished in the face of time pressure were: exercise and well-being activities (also chosen at a rate of 78% by non-current parents to minor children), hobbies and leisure activities (chosen at a rate of 67%), and scholarship (chosen at a rate of 44%).[179] The percentage of scholarship relinquishment for respondents currently parenting minor children was, interestingly, a mere 2% higher than non-current parents of minor children.[180] Of note, while there was a total of ten activity selections, the two groups of respondents shared two of the top three relinquished activities—scholarship and well-being activities.[181] While two of the top three relinquished activities were shared between non-current and current parents of minor children, the groups responded differently when it came to sleep versus hobbies and leisure activities—not so surprisingly, sleep was sacrificed at a higher rate for those who are currently parenting minor children.[182] These findings may suggest that the faculty members surveyed have much

176. *Id.*

177. *Id.* (Among those responding in the affirmative and indicating that they held no opinion on whether a pregnant woman can achieve similar outcomes as non-pregnant peers some respondents remarked that it appeared "exceedingly difficult" to achieve outcomes similar in degree to non-pregnant peers.)

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

more in common than anticipated, differing only when it comes to sleep and leisure.[183] This data rebuts notions that new parents—mothers in particular—are too busy with their children to invest a meaningful amount of time in their careers.[184]

The Law Faculty Survey also investigated whether faculty members experienced receiving comments from students related to their bodies and appearance.[185] 63% percent of women respondents indicated that they have received comments from students (whether in course evaluations or otherwise) related to their body or appearance, as compared to forty-two percent of male respondents.[186] Lastly, 42% percent of male respondents indicated that they had never been referred to by anything other than "professor" by students, while only twenty-one percent of the women surveyed could say the same.[187]

E. *Confirmations and Areas for Further Empirical Study*

One important finding springing from the Law Faculty Survey that may be generalized is that law faculty members appear willing to share their perceptions, beliefs, and experiences related to work and family life issues via an anonymous short survey. Therefore, an anonymous survey may be feasible to extend the research in this area to an expanded sample that may produce findings that can be confirmed to be representative of the experiences of law faculty in general.

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183. The survey also revealed certain instances in which the selected areas of sacrifice showed significant differentials. Selections made by current parents of minor children with higher indices included the following: sleep (54% as compared to 28% of non-current parents of minors); household and family needs (31% as compared to 11% of non-current parents of minors); and quality family time (23% as compared to 17% of non-current parents of minors). *Id.* Additionally, results indicated that those who are not currently parenting a minor sacrifice a higher rate of activities than those who are. These sacrifices include exercise and well-being (78% as compared to 54% of current parents of minor children), and hobbies (67% as compared to 31% of current parents of minor children). All other surveyed activities where within 10% of each other. *Id.*

184. This is an interesting finding when compared with what the Supreme Court suspected was a hidden rationale of the Cleveland maternity leave rule. The rule prohibited a teacher, who was a new mother, from returning to work until a designated period after the birth of a child. *See* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 650 (1974),

> [I]t may be that the Cleveland rule is based upon another theory—that new mothers are too busy with their children within the first three months to allow a return to work. Viewed in that light, the rule remains a conclusive presumption whose underlying factual assumptions can hardly be said to be universally valid.

Id.

185. SURVEYMONKEY, *supra* note 13.

186. *Id.*

187. *Id.*

In further study, a survey into the perceptions and experiences of law faculty as it relates to family and work life may be enhanced in several ways. It would be interesting to drill down the demographics of survey respondents compared to that permitted in this small sample study.[188] This would, for example, allow for a more focused study of the experiences of pregnant law faculty, as well as the effect of the body of the professor on student teaching ratings. It would also be interesting to track the experiences of law faculty with associated time references.[189]

F. *Overall Potential Effects*

Based on the findings of this exploratory study and upon reflecting on my experience as a pregnant law professor, several potential negative effects for the pregnant law professor may result due to the harmful associations made by others. The following is a brief discussion of each of the previously unanticipated consequences.

1. Negative Teaching Ratings and Contrapower Harassment by Students

As explored in Part III, allegations of professor bias surfaced as a new negative theme in my teaching ratings for the semester when my pregnancy became visible to students.[190] As discussed, these forms of criticisms have roots in gendered associations of women, and, more so in my case, pregnant women.[191] This criticism was particular to the semester of my visible pregnancy as compared to other semesters teaching first-year contracts courses to this group of students and to other similarly situated groups of students. While other factors (like course design and grading practices) remained constant, the factor that changed was the emergent course of my pregnancy. In sum, the negative comments may be attrib-

188. I was fairly limited in demographic questions because the sample size was small enough that if I asked for demographics beyond gender, identities would be compromised.

189. *See id.* (accounting one survey of law faculty conducted in August 2012). An assumption about the experience of a pregnant law professor in the modern era may be that society has evolved from views that imposed limitations on pregnant women as was the case in the times of *LaFleur*. *See* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 634–35 (1974) (requiring maternity leave for pregnant employees and restricting their return to the workplace). Yet, as discussed above, my interactions with students during the course of my visible pregnancy revealed certain negative associations and reactions to my pregnancy lamentably similar in nature to Dr. Baker's experience as a pregnant professor twenty years ago. *See* Baker & Copp, *supra* note 9, at 31 (recounting Dr. Baker's negative student evaluations regarding her pregnancy in 1992).

190. Student Evaluations on Class Climate, *supra* note 88.

191. *See* Baker & Copp, *supra* note 9, at 30 (1997) (identifying expectations of pregnant women's behavior as impacting instructor evaluations).

uted to student perceptions that my pregnancy adversely impacted their learning experience due to gendered expectations of law professors.[192]

Another phenomena discussed by Dr. Baker and Dr. Copp is when students use teaching ratings as a medium to punish their professors for violating gendered expectations.[193] Student bullying of university professors has been examined in psychological studies and is included in the category of behavior known as "contrapower harassment."[194] In fact, it has been recognized that "[o]ne of the most common and potentially damaging areas where contrapower harassment occurs is via anonymous teaching evaluations of instructors. Students' evaluations of women faculty are sometimes suspiciously low."[195] In this way, teaching ratings may be used as instruments of bullying by students.

Contrapower harassment in the form of hostile student teaching ratings may have a significant impact on the psychological and professional lives of female faculty.[196] Discussing studies of the effects of contrapower harassment on university faculty, Dr. NiCole T. Buchanan and Dr. Tamara A. Bruce, licensed clinical psychologists and university professors, noted that

> [m]any faculty who experience contrapower harassment report heightened levels of depression and anxiety,[197] and severe cases of harassment can lead to traumatic stress symptoms. There are also negative job consequences. Some women's interest in teaching decreased as a way to avoid harassment.[198]

It has also been reported that contrapower harassment or bullying of professors by students may result in a loss of productivity for the professor.[199]

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192. *See id.* (noting some behavioral expectation of pregnant professor were that they could be "easily agitated, rude, and sickly.").

193. *Id.* at 40.

194. *See generally* NiCole T. Buchanan & Tamara A. Bruce, *Contrapower Harassment and the Professorial Archetype: Gender, Race, and Authority in the Classroom*, 34 ON CAMPUS WITH WOMEN n.1–2 (2004–2005), *available at* http://www.aacu.org/ocww/volume34_1/feature.cfm?section=2 (defining contrapower harassment as harassment against people with organizational power by people they instruct, guide, and evaluate and discussing occurrences of, examples of, and ways to address such harassment).

195. *Id.*

196. *Id.*

197. *See, e.g.*, Wasson & Tyler, *supra* note 8, at 1322–24 (noting that "it is the anomalous negative comment that stays with us, often for years. The far-more-common positive comments do not have the same power to uplift as the negative comments have to hurt.").

198. Buchanan & Bruce, *supra* note 194, at 2; *see* SURVEYMONKEY, *supra* note 13 (citing a number of answers by faculty regarding disparaging student feedback).

199. *See Fat Female Professors and Student Evaluations of Teaching*, *supra* note 157 (stating in Comment one by user H.E. Baber that all fat people, including women are at a

2. On Advancement (Potentially)

Related to professional consequences, it may be the case that pregnant professors experience detrimental ramifications of gendered expectations regarding decisions on promotion and tenure. First, as noted above, as potential targets of contrapower harassment women and pregnant professors may experience decreased interest in pursuing promotion and tenure as a way of avoiding future harassment.[200] Anecdotally, peers who have experienced bullying personally or via hostile or malicious teacher-rating comments have expressed feeling demoralized and experiencing self-doubt.[201] Although it is impossible to study the ultimate effect of the psychological ramifications of student bullying on the law professor,[202] it is not illogical to conceive that bullying may negatively impact the decisions of law faculty as they pertain to pursuing promotion and tenure. In this way, such effects would create a self-imposed glass ceiling for the law professor.

Second, Drs. Buchanan and Bruce contend, "[f]or those who remain [in academia], negative class ratings and skewed peer or supervisor perceptions can influence tenure and promotion decisions for female faculty, resulting in fewer women achieving positions of power within academic institutions."[203] Dr. Baker's experiences and mine further underscore the negative associations that stem from a professor's job performance related to pregnancy and gendered expectations by students in teaching ratings. Students may attribute negative characteristics such as irritability, bias, and general grumpiness to the pregnant professor.

This article also explored law faculty opinions of pregnancy as a time of exceptional physical, emotional, or intellectual challenge. Some faculty opinions highlighted the effect of child-rearing on professional accomplishment in Part IV(D). Regarding the Law Faculty Survey findings, the opinions may appear benign and even empathetic on a surface level; however, such views, when held by faculty peers, may inadvertently color the

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disadvantage, and noting how certain students would leave negative and flippant messages on her desk, and also how students believed she was built big/fat and not merely pregnant).

200. *See generally* Buchanan & Bruce, *supra* note 194, at 2 (discussing the disparaging way in which woman can be treated by students, particularly male students); *see also* SURVEYMONKEY, *supra* note 13 (citing the reactions of a number of University of Phoenix professors to harassing remarks made by students in their classrooms).

201. *But see* Kyle Kensing, *The Top 10 Least Stressful Jobs of 2013*, CAREERCAST (2013), http://www.careercast.com/jobs-rated/10-least-stressful-jobs-2013 (noting college professor as the least stressful career).

202. The ultimate research question would be to understand whether bullied professors leave academia as a result of and at an increased rate due to bullying. However, this question could not be studied empirically because the impacted parties would not be identifiable.

203. Buchanan & Bruce, *supra* note 194, at 2.

perceptions of the quality and level of a pregnant professor's teaching, scholarly, and service accomplishments. The logic and operation of these beliefs can be limiting to the pregnant law professor, a situation that echoes the Cleveland School Board's mandatory maternity leave policies, which led to the *LaFleur* opinion.[204] In *LaFleur*, the school board viewed the pregnant teacher as universally (physically) incompetent to carry out her teaching job duties, a perspective opposed by the Supreme Court.[205] A pregnant law professor's ability to capably do her job may well be suspect when her colleagues communicate generalizations such as physical discomfort or exceptional fatigue.

3. Frustration of Choice

Lastly, I reach the most distressing and personal aspect of my research: when I have made work and family life balance choices in the past, I presumed to know all the potential ramifications and consequently made important decisions impacting my family based on incomplete information. As I reflect on my best-laid plans and the level of investment my entire family has made to help me work towards attaining professional achievements in legal academia, I now have cause for doubt. As discussed in Part IV(B), the personal consequences are foreseen and ultimately accepted by women who forgo taking an off-ramp[206] to care for their children, or are not in a position to do so. For those who choose not to take a mommy track or exit the classroom upon "showing" the signs of pregnancy, the imposition of gendered expectations or perceived limitations related to her potential work-life accomplishments might thwart a woman law professor's work-family choices.[207]

V. Proposed Remedial Actions

In her op-ed piece, Dr. Slaughter ruminates about the feminist inroads trudged by women baby boomers:

> [P]recisely thanks to their progress, a different kind of conversation is now possible. It is time for women in leadership positions to recognize that although we are still blazing trails and breaking ceilings,

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204. Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 651 (1974).

205. *Id.*

206. *See* Sylvia Ann Hewlett, Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success (2007).

207. The consequence of this being that a woman would not reap the full benefit of her time investment in her career *and* lose the time with her family that was dedicated to work-advancement opportunities.

> many of us are also reinforcing a falsehood: that "having it all" is, more than anything, a function of personal determination.[208]

While previous generations of women, like women teachers in the 1970's, had to fight the blatant societal limitations imposed on their ability to make choices concerning their livelihood and families,[209] experience reveals that certain societal biases today may result in barriers that impair a pregnant professor's ability to achieve her career objectives.[210] Dr. Slaughter also notes the work of broadcast journalists Kerry Rubin and Lia Macko, the authors of the 2004 book *Midlife Crisis at 30*,[211] who state in their book that their research revealed that "while the empowerment part of the equation has been loudly celebrated, there has been very little honest discussion among women of our age about the real barriers and flaws that still exist in the system despite the opportunities we inherited."[212]

As such, to curb the deleterious effects uncovered by this article, I recommend that policies calling for synchronous intervention strategies be implemented by law schools. These proposed remedial strategies are discussed below.

A. *Synchronous Intervention Strategies*

Law schools should work towards addressing biased, stereotypical, and gendered expressions at all levels including, but certainly not limited to, student-professor interactions. Intervention strategies should be implemented for at least a few reasons. First—whether communicated inside or outside of formal class discussion and grounded in uninformed or hateful motivation—biased, stereotypical, and gendered expressions create

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208. Slaughter, *supra* note 141.

209. Aline Mendelsohn, *Life Choices Can Drive Midlife Crisis At 30*, CHI. TRIB. (Aug. 4, 2004), *available at* http://articles.chicagotribune.com/2004-08-4/features/0408040070_1_kerry-rubin-macko-and-rubin-lia-macko.

210. *See also* Joan C. Williams, *Long Time No See: Why Are There Still So Few Women in Academic Science and Engineering?*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (2006), http://www.ncbi.nlm.nih.gov/books/NBK23784/ (noting employers are required by the Pregnancy Discrimination Act to treat pregnant professors the same as other similarly capable workers).

211. Slaughter, *supra* note 141 (describing Rubin and Macko's 2004 book "Their *cri de coeur* for Gen-X and Gen-Y women"). *See also* Mendelsohn, *supra* note 209 (noting "the authors interviewed hundreds of college-educated women across the country and found that, around 30, these women are facing a crunch of major life decisions concerning marriage, children, and career."). "They expect to be on their way to 'having it all.' When they're not, they blame themselves—unlike Baby Boomers, who blamed the male power structure, the authors say." *Id.*

212. Slaughter, *supra* note 141.

hostile environments that are not productive to learning.[213] Students and professors alike may be the target of these expressions. By not speaking out against such injurious conduct, law professors and administration endorse biased, discriminatory, and gendered conduct by silence. Second, as seen in Dr. Baker's study, bias and negative reactions by students to unfulfilled gendered expectations on the part of their professors may lead students to punish their professors via anonymous student teaching ratings.[214] In this way, students may bully or harass their professors in the current teaching rating schematic with impunity. As discussed above, the bullying of professors presents serious effects to the bullied professor. Lastly, law students will eventually enter the honorable profession of the practice of law. Critical to their preparedness to enter the profession is training in making evidence-based decisions, the exercise of critical thinking, and limiting the effect of irrational bias in argumentation. The profession is a self-regulating one that imposes upon all lawyers (professors included and students soon to be included) the obligation to hold others accountable to the highest standards of the professional values that our profession embraces.[215] These aspirational values include a commitment towards exhibiting fairness and equity. Therefore, when confronted with blatant or uninformed acts of intolerance[216] expressed toward others in the law school setting, we must act to address the source and impact of these deleterious actions.

The Southern Poverty Law Center, the leader in tolerance education in the United States through its special project "Teaching Tolerance," recommends that teachers and workers in the full spectrum of work settings

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213. *See, e.g.*, Chang & Davis, *supra* note 105 (discussing bias in law classrooms and institutional responses); Therese A Huston, *Race and Gender Bias in Higher Education: Could Faculty Course Evaluations Impede Further Progress Toward Parity?*, 4 SEATTLE J. FOR SOC. JUST. 591, 597 (2006) (discussing gender and racial bias in higher education).

214. Baker & Copp, *supra* note 9, at 30 (citing examples of such behavior in the literature review).

215. MODEL RULES OF PROF'L CONDUCT R. 8.3 (Am. Bar Ass'n Annotated Model Rules of Prof'l Conduct, 7th Ed. 2011).

216. This author adopts the definition of the term "tolerance" as defined in UNESCO's Declaration on the Principles of Tolerance: "Tolerance is respect, acceptance[,] and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human. Tolerance is harmony in difference." UNESCO, *Declaration on the Principles of Tolerance* (Jan. 26, 2013, 11:42 AM), http://www.unesco.org/webworld/peace_library/UNESCO/HRIGHTS/124-129.HTM#one. "Teaching Tolerance" and the Southern Law Poverty Center also adopt the UNESCO definition of tolerance. S. POVERTY LAW CTR., *What's in a Name?* (Jan. 26, 2013, 11:39 AM), http://www.tolerance.org/magazine/number-41-spring-2012/department/what-s-name. The "Teaching Tolerance" project of the Southern Poverty Law Center is aimed at instilling principles of tolerance in work and educational settings in the United States. Strategies for the implementation of tolerance as advocated by "Teaching Tolerance" will be discussed hereafter.

counter racism, bias, and acts of bullying by speaking out against discriminatory and harassing comments and actions in immediate and direct response upon hearing or learning of them.[217] In this way, the timing of the intervention is critical. Synchronous or contemporaneous intervention is most effective because it allows for the direct redress of biases, bullying, and discriminatory behavior and works to promote a spirit of understanding and equality in the law school setting. Synchronous intervention is only possible, however, if professors and the law school administration are committed to address biased, discriminatory or gendered remarks in their immediate presentation *and* are prepared to educate students and others regarding their harmful ramifications.[218] Thus, in order to effectively curb the negative effects presented by biased and stereotypical views of law faculty and students alike, law school institutions and administrations are in a unique position to educate students, faculty, staff, and administration on issues related to socio-cultural bias and stereotyping.

In fact, clinical psychologists have suggested that the implementation of programs training professors and university administration—especially those involved in promotion and tenure decisions—on the prevalence and effects of contrapower harassment is the most effective method to prevent potential negative career consequences to professors resulting from contrapower harassment by students.[219] However, I argue that such training programs should be extended to include students to help eradi-

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217. *See* S. POVERTY LAW CTR., *Denounce the Act* (Jan. 26, 2013, 12:01 PM), http://www.tolerance.org/publication/denounce-act.

218. In "Speak Up!," a publication intended to be used as a tool for workplace and school setting training, a four-step intervention plan is suggested: (1) Interrupt, (2) Question, (3) Educate, and (4) Echo. S. POVERTY LAW CTR., *Speak Up!* (Sept. 17, 2012), http://www.tolerance.org/sites/default/files/general/speak_up_handbook.pdf.; S. POVERTY LAW CTR., *Speak Up Against Bias* (Jan. 26, 2013), http://www.tolerance.org/blog/pocket-guide-makes-it-easy-speak. The publication offers scenarios in which individuals have encountered racism, bias, and harassment and gives recommended ways to effectively counter these actions, comments, and behaviors. In sum, "Teaching Tolerance" addresses a great variety of ways to deal with these situations, but they all require one to *first*, "speak up." For example, the first two actions under the four-step plan may take the following shape: when encountering a joke that has racial or biased tones, one can say: "I am sorry, but I don't think that joke is funny" (Interrupt phase) and then follow-up by asking "What is funny about it?" (Question phase). The individual is then to offer information that educates the person making the joke, the reason why the joke is cause for harm (Educate phase), and then close the intervention interaction by affirming principles of tolerance within the context of the particular interaction (Echo phase). *Id.*

219. *See* Buchanan & Bruce, *supra* note 194, at 2 (referencing the work of fellow psychologist and professor Michelle Paludi related to methods to combat the negative career effects of contrapower harassment of professors by students. Buchanan and Bruce note that successful anti-harassment and anti-discrimination training programs exist that can be used as guides to develop training modules specifically designed to curtail the effects of contrapower harassment in a university setting).

cate all potential sources of the issue to the extent possible. It is not a novel idea to include training modules and curricula in the law students' orientation and law school experience that address professionalism and the acquisition of skills to equip students for the practice of law.[220]

B. *The Problem of the Anonymous Student Rating*[221]

If timing is an important feature of effective intervention plans that attempt to address the imposition of gendered expectations and bias upon the professor in the law classroom, then the anonymous end-of-course student teaching rating presents a special problem. Students may also feel more readily empowered to punitively reprove professors for unfulfilled gendered expectations when cloaked with anonymity. In the case of the end-of-course teaching rating, the professor is not readily able to address and respond to instances of bias, critiques based on gendered expectations, and contrapower harassment evidenced in the ratings. Professors are made aware of their existence only after the end of the course and after they no longer have opportunities to dialogue with the students as a group. Moreover, even if, for example, law school administrations sought to generally address biased themes arising in teaching ratings with students post facto, the opportunity may not present itself. This is because it may be unlikely for law faculty to disclose negative or harsh evaluations by students.[222] If the present anonymous student teaching

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220. Training, for example, related to the identification and avoidance of bias in argumentation and decision-making is a skill that is useful to the student in the law school setting to develop critical thinking skills and one that can readily be adapted for practice.

221. While this author has an opinion about the use of anonymous student teaching ratings, this article does not seek to make a case about how to redesign the traditional student teaching rating tool to solve for student bias in student course ratings. Merritt, Wasson, and Tyler thoroughly discuss potential improvements. *See generally* Deborah J. Merritt, *Bias, The Brain, And Student Evaluations Of Teaching*, 82 ST. JOHN'S L. REV. 235, 240 (2007) (proposing changes to student evaluation systems). *See also* Wasson & Tyler, *supra* note 8, at 1304 (arguing that the present student teaching rating instrument "should be designed to eliminate bias, reduce stereotypes, enhance respect, and prompt more reflective, rational input so our faculty colleagues are treated more fairly in the process."). *Id.*

222. Wasson & Tyler, *supra* note 8, at 1323 n.92. The authors refer to Professor Adrienne Davis's article *An Epistolary Exchange Making Up is Hard to Do*, *supra* note 105 (discussing the phenomena of professors not disclosing stinging evaluations from students stating that professors are either embarrassed or do not want to disclose negative feedback). Before going on to discuss a sampling of evaluation excerpts collected among legal writing professors in their school and on the Legal Writing Institute (LWI) blog but protecting their anonymity. Wasson and Tyler state eloquently:

> But silence obviously allows injustice to flourish. Moreover, silence increases our sense of isolation and forecloses necessary discussions about the nature of teaching and learning, the changing law school culture, and the validity of entrenched hierar-

rating system remains in place, it may be that the only opportunity to educate students related to the effect of bias and gendered expectations in the teaching rating evaluation process is to conduct student training or provide education tools prior to inviting students to contribute to the evaluation process of professors.

VI. Conclusion

The results of my research surprised me. This is because as I set out to reflect on my experiences, I wanted to believe that the stinging and ungrounded remarks by the student-rater highlighted in Part III(B) were an anomaly and that the intrusive questions and assuming comments that I received throughout the course of my visible pregnancy were merely awkward attempts by students to engage me in social conversation. I assumed that exactly twenty years after Dr. Baker faced negative ramifications of student bias as a pregnant professor, that my personal experience as a pregnant law professor would be noticeably improved. And yet, forty years after significant advancements were made, and the legal win in *Cleveland Board of Education v. LaFleur* at the Supreme Court that secured the right of women teachers (and professors) to work throughout the course of their pregnancies and beyond,[223] I conclude that my recent experience as a pregnant law professor reveals lamentable similarities with women who have preceded me. Also, surprisingly, my assumption going into my recent pregnancy that my professional title and academic pedigree protected me from facing pregnancy-based bias and discrimination by students in the workplace was wrong. In other words, I was categorically mistaken in assuming that I could control student bias through my actions and choices.

To ensure that my experience does not repeat for other women twenty years down the road, significantly more individuals and groups will need to alter their respective actions. To influence the next generation of lawyers graduating from our law schools and entering the profession, and to ensure that these future professionals have an ability to identify and control for personal biases and discriminatory behavior, law faculty and administration must accept responsibility for educating students on the

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chies in the legal academy. Education is a joint endeavor: it requires a teacher and a learner. Until we can discuss—openly and publicly— student comments like the ones below, we appear to tacitly accept them, giving the comments a power they do not deserve. As long as we keep these comments to ourselves, we cannot begin to analyze or understand them, and we certainly will not be able to find more effective ways to obtain meaningful feedback from our students that will enable us to teach them more effectively.

Wasson & Tyler, *supra* note 8, at 1323.

223. Cleveland Bd. of Educ. v. Lafleur, 414 U.S. 632, 650–51 (1974).

negative consequences flowing from gendered expectations and bias. This requires individual commitments by law faculty, administration, and students to respect the choices made by those we work and learn alongside, and to consciously avoid imposing one's personal experiences, values, and bias on members of our law school community.

APPENDIX

Survey of Law Faculty related to Career/Family Life Opportunities, Perspectives, and Decisions

1. What is your gender? Male or Female

2. Do you currently parent minor children? Yes or No

3. During the time that you have been employed as fulltime law faculty at this or any other institution, have you added a minor child (by birth, adoption or foster-care) into your family? Yes or No

4. More specifically, have you or your partner ever been pregnant while you have been employed as a full time law faculty? Yes or No

5. During the time that you have parented minor children and worked as fulltime law faculty, were/are you the primary care giver? Yes, No, or Not Applicable

6. During the time that you parented minor children and worked as fulltime law faculty, were/are you the primary or higher wage earner in your household? Yes, No, or Not Applicable

7. Which three (3) activities do you most often forego when faced with time pressures? Please choose 3 options. Class preparation, Scholarship, Sleep, Exercise and Well-Being Activities, Hobbies or Leisure Activities, Time with friends, Household and Family Needs (i.e. cooking meals, washing clothes etc.), Quality Family Time, Service to institution, Service to community/pro-bono work, Other (please specify)

8. In legal practice, did the advancement of your career influence your decisions (including timing) related to parenting of minor children (whether via adoption, foster-care or pregnancy)? Yes, No, and I did or have considered or experienced adoption, pregnancy and/or foster care, No, and I did/do not plan to parent minor children, or Not Applicable

9. As fulltime law faculty, has the advancement of your career influenced your decisions (including timing) related to parenting of minor children (whether via adoption, foster-care or pregnancy)? Yes, No, and I did or have considered or experienced adoption, pregnancy and/or foster care, No, and I did/do not plan to parent minor children, or Not Applicable

10. Do you believe that it is feasible for fulltime law faculty parenting minor children to achieve outcomes in teaching, scholarship, and service to the institution similar in degree to non-parents of minor children? Yes, No, or No Opinion, Why/Why Not (comment)?

11. Do you believe that it is feasible for pregnant fulltime law faculty to achieve outcomes in teaching, scholarship, and service to the institution similar in degree to non-pregnant peers? Yes, No, or No Opinion, Why/Why Not (comment)

12. If you or your partner experienced pregnancy while you were employed as fulltime law faculty, did you receive feedback from students related to your/your partner's pregnancy during the course of the pregnancy? Yes, No, or Not Applicable, and if yes, please explain

13. If you or your partner experienced pregnancy while you were employed as fulltime law faculty, did you receive feedback from law faculty related to your/your partner's pregnancy during the course of the pregnancy? Yes, No, or Not Applicable, and if yes, please explain

14. If you or your partner experienced pregnancy while you were employed as fulltime law faculty and/or adopted or fostered a minor child, did you take an official family leave after the arrival of your child? Yes, No, or Not Applicable, and please explain why or why not

15. While employed at Phoenix School of Law, have you experienced students (whether in person, e-mail or otherwise) referring to you not by your proper professional title (i.e. Professor, Judge, Doctor etc.) but by alternate titles? No, Yes (Mr.), Yes (Ms.), Yes (Mrs.), Yes (Other)

16. Have you received student feedback (whether in person, course evaluations or otherwise) on your appearance or body? Yes, No, and if yes, please explain.