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JOAN E. BERTIN: PANEL THREE - EDUCATIONAL AND SOCIAL SCIENTIFIC PERSPECTIVES ON ALL-FEMALE EDUCATION

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JOAN E. BERTIN: What I want to start with are some reflections of what I have heard around the room today. There are two points in particular that I basically agree with, and I think that there is widespread agreement among us about these points. The first is that co-ed schools often fail to deal with entrenched and pervasive patterns of sexism and the effects of those patterns principally on female students.¹ The second is that single-sex schools do not really solve the bigger problem that is faced by most students in most schools and never will.² Then, in addition to which, we have heard that they invite gender-essentialist thinking,³ and they risk reinforcing the destructive patterns and stereotypes that are part of the gender-related problems confronting many women and men.⁴ So, what I

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¹ See generally Valorie K. Vojdik, *Girl's Schools After VMI: Do They Make the Grade*, 4 DUKE GENDER L & POLY 69, 93-95 (1997) (explaining a study performed by Valerie Lee, who observed incidents subjecting female students to sexism in coeducational schools, and noted that schools and teachers failed to prevent these occurrences).

² See *id.* at 94 (stating all-girls schools will not put an end to the discriminatory treatment girls suffer in coeducational schools but, rather, will suggest that adults are unable to prevent such discriminatory treatment).

³ See *id.* at 70 (positing that the Young Women's Leadership School was founded upon the same generalizations about women as put forth by the Citadel and the Virginia Military Institute, namely, that girls cannot learn in the same manner as boys).

⁴ See *id.* at 84 (contending that segregating sexes in public schools may confirm and perpetuate stereotypes about the "way women are" and these stereotypes have helped in denying women many opportunities throughout history); see also Cynthia Fuchs Epstein, *The Myths and Justifications of Sex Segregation in Higher Education: VMI and the Citadel*, 4 DUKE J.

conclude as to why this is such a hard problem and why so many of us feel so ambivalent is that we are faced with an options choice.⁵ Neither of these options is very appealing. So, there is an irony in the fact that we have some degree of conflict, although I think it may be much smaller than we may have originally thought, over the fact that we are trying to decide which of two suboptimal choices to select.⁶

I am a lawyer, which may not have been clear from Nadine Strossen's introduction, and as a lawyer on a social science panel, I feel obliged to say the following: That social science data may be very interesting and instructive; it may or may not be legally outcome-determinative.⁷ We are, in this panel, trying to talk about what it is we know. Because of my training as a lawyer, I cannot help noting that this information may or may not matter in terms of how the courts will resolve some of these cases.⁸ This is frustrating for many social scientists, who may not appreciate that constitutional rights simply cannot vary depending upon what "the latest group of studies may show."⁹ Rather, there are some normative values expressed in our laws and in our legal system that

GENDER L. & POL'Y 101, 117-18 (1997) (arguing that single-sex education stresses the differences between men and women and denies them an opportunity to interact with one another furthering the stereotypical ideas each sex has regarding the other).

⁵See Tracy E. Higgins, *Democracy and Feminism*, 110 HARV. L. REV. 1657, 1669 (1997) (explaining that the Virginia Military Institute Supreme Court decision established two options for education: public schools will have to admit both sexes, or public schools that choose to remain single-sex schools will be forced to become private institutions).

⁶See generally *id.* (suggesting that the two options established by the *VMI* decision present many difficulties).

⁷ See generally, *United States v. Virginia*, 116 S.Ct. 2264, 2283-84 (1996) [hereinafter "*VMI*"] (arguing that the noted psychological and developmental differences between men and women justifies Virginia's remedial plan of maintaining two separate military schools for men and women). However, the Court held that such differences did not justify denying women the opportunity to attend *VMI*. *Id.* at 2284.

⁸ See *id.* at 2283-84, 2287 (stating that due to the *VMI* decision, it is clear that courts will not base their decisions on social science data, but will look to the rights and protections provided under the Constitution).

⁹See generally *id.* at 2283-84 (suggesting that the studies noted by the lower court, documenting the differences between men and women, will not justify denying women the equal protection of the laws).

supersede scientific information.¹⁰

What I came to do today is to share the results of a couple of years of conversation with a large group of social scientists and educators over the issue of single-sex education in the context of the Citadel and Virginia Military Institute (VMI) cases,¹¹ and the consequences of that knowledge for these legal debates. The result of this series of conversations that took place over about a two or three-year period of time were four briefs. The first two were filed specifically on behalf of Carol Gilligan because her research was cited so prominently in Citadel and VMI;¹² and the latter two briefs were filed on behalf of a much wider community of social scientists who were interested in understanding this issue and contributing to a reasonable outcome.¹³ So, among the people who contributed to this discussion are my colleagues Cynthia Fuchs Epstein¹⁴ and Carol Gilligan,¹⁵

¹⁰ 20 U.S.C. §1681(a)(1994). Title IX states: "No person in the United States shall, on the basis of sex, be excluded from participating in, be denied benefits of, or be subject to discrimination under any education program or activity receiving Federal financial assistance." *Id.* U.S. CONST. amend. XIV, §1. The Fourteenth Amendment states: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

¹¹ *Faulkner v. Jones*, 51 F.3d 440 (4th Cir. 1993) (holding that the Citadel's admission policy violated the Equal Protection Clause of the Fourteenth Amendment by denying admission to women); 116 S.Ct. 2264 (1996) (holding that the admission policy of the VMI decision, which denied admission to women, violated the Equal Protection Clause of the Fourteenth Amendment).

¹² Carol Gilligan is a member of the Human Development and Psychology faculty of Graduate School of Education at Harvard University. While working with the Program on Gender, Science and the Law at Columbia University School of Public Health she signed the Brief Amici Curiae in Support of Petitioner by the American Association of University Professors et al, *United States v. Virginia*, 116 S.Ct. 2264 (1996) (Nos. 94-1941, 94-2107), which she used to clarify the results of her research on the "role of gender in psychological development and its implications for educational programs," which she asserts does not support sex segregation in schools.

¹³ See Amici Curiae Briefs, *United States v. Virginia*, 116 S.Ct. 2264, WL 703403 (1995); WL 681099 (1995).

¹⁴ Cynthia Fuchs Epstein is Professor of Sociology, Graduate Center, City of New York. She is the author of *DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER* (1988) and *The Myths and Justifications of Sex Segregation in Higher Education: VMI and the Citadel*, 4 DUKE J. GENDER L. & POL'Y 101 (1997) (advocating against single-sex

Ruth Hubbard,¹⁶ Michelle Fine,¹⁷ Bernice Sandler,¹⁸ and many others. It is interesting to see how many shared understandings arose in the context of this discussion. Here was the proposition on which there was essentially no dispute: That all-male schools like Citadel and VMI -- and here I want to be very explicit about the fact that I am talking about principally white male schools, largely privileged students, even if not all upper class students--could not be justified on the basis current social science data.¹⁹ Some people think that they are destructive to males and to society.²⁰ That is point number one on which there is essentially no debate.²¹

Point number two: That single-sex education could not be justified on the basis of any alleged inherent, biological, or genetic differences between the sexes in terms of personality characteristics, psychological development, intellectual capacity, or behavioral or cognitive ability traits.²² Gilligan's research is most prominently cited for

education because of the negative impact it has on women and society).

¹⁵ See *supra* note 12.

¹⁶ Ruth Hubbard is a Professor of Biology Emerita at Harvard University.

¹⁷ Michelle Fine is a Professor at the Graduate Center, City University of New York, formerly Goldie Anna Professor of Education, University of Pennsylvania.

¹⁸ Dr. Bernice Sandler is a Senior Scholar in Residence at the National Association of Women in Education in Washington, D.C. Dr. Sandler is the editor of *About Women on Campus*, the NAWA quarterly newsletter.

¹⁹ See generally Richard Cummings, *All Male Black Schools: Equal Protection, The New Separatism and Brown v. Board of Education*, 20 HAST. CONST. L.Q. 725, 730 (1993) (stating that data compiled by 500 social scientists resulted in a finding that segregation has negative psychological effects on members of the segregated group).

²⁰ See Sharon K. Mollman, *The Gender Gap: Separating the Sexes in Public Education*, 68 IND. L.J. 149, 176 (1992) (stating that male students at single-sex schools score below their male counterparts at coeducational schools).

²¹ See generally Marsha Garrison *et al.*, *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 MICH. J. GENDER & L. 515, 525 (1996) (stating that upper-class male students were more likely than other students to be called on by their professors).

²² See generally Vojdik, *supra* note 1, at 78 (1997) (observing that although physical differences between men and women may justify differential treatment, alleged differences in abilities, traits and interests of women do not justify public exclusion of women).

this proposition.²³ In her brief, Gilligan repudiated the interpretation of her research that the way men and women think, react, and learn is inherently different.²⁴ Quoting from her brief and referring to the research that is reprinted in her book, *In a Different Voice*,²⁵ Gilligan stated,

[t]he observations about psychological development patterns that are generally associated with gender *In a Different Voice* are not based on any premise of inherent differences between the sexes, but on the basis of their different opportunities and experiences. The different voice I describe is characterized not by gender but by theme. . . . The contrast between male and female voices are presented here to highlight a distinction between two modes of thought and to focus on a problem of interpretation rather than to represent a generalization about either sex.²⁶

And here I am going to underscore the text for you: "*There is too much variation within each sex to argue that psychological differences result from 'real' differences between the sexes. It is incontrovertible, for example, that qualities such as aggression and empathy are not sex-based--women can be aggressive and men can be empathetic.*"²⁷

The next point on which there is general agreement, as I mentioned in the introduction, is that there is virtually no support for the proposition that the type of single-sex education at VMI and Citadel

²³ See Carol Gilligan & The Program on Gender, Science and Law, *Opposing All-Male Admission Policy at Virginia Military Institute: Amicus Curiae Brief of Professor Carol Gilligan and The Program on Gender, Science and Law*, 16 WOMEN'S RTS. L. REP. 1, 15 (1994) (stating that Gilligan's work documents the negative effects that stereotypes such as male-aggressiveness, competitiveness or independence as opposed to female passivity has had on female psychological development).

²⁴ *Id.* at 14.

²⁵ CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

²⁶ *Id.*

²⁷ *Id.*

results in positive educational outcomes for males.²⁸ Most of the research that supports this proposition, and that is cited by VMI and Citadel, drew on studies of females.²⁹ According to my community of social scientists and educators, this research has very little, if any, applicability to males.³⁰ Much of the research was done by Valerie Lee.³¹ Quoting again from the VMI brief:

Her (Lee) research provides scholarly support for the proposition that single-sex education at the secondary school level provides benefits for young women on many educational outcomes, including achievement, attitude and behaviors. However, the efficacy of single-sex education is shown in a plethora of studies to be gender-specific and restricted to young women. These studies speculate that a cause for their findings is that females experience a form of discrimination in education that males do not experience. Single-sex education thus benefits females, who choose it, since in these settings this gender-specific disadvantage is reduced or eliminated.³²

I should note for you that some of the data which demonstrated positive

²⁸ See Lucinda M. Finley, *Sex-Blind, Separate But Equal, or Anti-Subordination? The Uneasy Legacy of Plessy v. Ferguson for Sex and Gender Discrimination*, 12 GA. ST. U. L. REV. 1089, 1119 (1996) (stating that studies suggest a negative effect on achievement, attitudes, and behavior from all-male education).

²⁹ Gilligan and the Program on Gender, Science and the Law, *supra* note 23, at 14 (concluding that single-sex education benefits women).

³⁰ *Id.* (stating, however, that the support for the proposition that single-sex education benefits women has little relevance for single-sex education for men, because the factors that justify women's programs do not apply to men).

³¹ Finley, *supra* note 28, at 1119 (stating that the reasons single-sex education may benefit females does not apply to men, hence, all-male schools will not ameliorate the effects of societal discrimination on women).

³² *Id.* at 1118 (stating that current research reveals that single-sex education may only be effective for women because it eliminates female-specific forms of educational discrimination, such as silencing, discouragement, and male-peer harassment).

outcomes for females is believed by many of the people who signed this brief to be both tainted and dated--tainted by a lack of consideration of class³³ and a failure to control for the self-selection process,³⁴ and dated because a great deal of it is drawn from a period of time when women went to single-sex schools because only limited educational opportunities existed for women.³⁵

Now, let me get to the point about the destructiveness for males in the single-sex setting. Gilligan, in particular, is critical of single-sex male schools for their incorporation of stereotypes and caricatures about maleness and masculinity and the capacity, as she believes, of such institutions to foster emotional detachment, brutality, and violence.³⁶ Lee has some other observations that I think are worth sharing. She studied a number of single-sex schools and found "the most serious incidence of sexism we observed were in all-boys classes with male teachers."³⁷ She went on to state that "we saw females regarded as sex objects in writing, in classroom displays, and in class discussion."³⁸

There was consensus that the data was different for males and for females and that the difference reflected the experiences of males and

³³ See generally Catherine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L. J. 1281, 1328 n. 49 (1991) (stating that the standard used by courts in determining equal protection violations has been termed the male standard, and that this standard is also white and upper class to a considerable extent, evidenced by the fact that poor women of color are protected least by this standard).

³⁴ See generally Daniel Gardenswartz, *Public Education: An Inner City Crisis! Single-Sex Schools: An Inner City Answer?*, 42 EMORY L.J. 591, 645 (1993) (stating that both single-sex "choice" schools and "magnet" schools which require students to pass certain academic criteria raise equal protection concerns).

³⁵ Vojdik, *supra* note 1, at 93 (stating that no consistent pattern of results which favors either single-sex or coeducational schools for either boys or girls exists).

³⁶ Gilligan & The Program on Gender, Science and Law, *supra* note 23, at 15 (stating that unrealistic, inaccurate sex-based stereotypes harm society because by defining the sexes in such a limited way excludes human qualities shared by both sexes).

³⁷ Vojdik, *supra* note 1, at 93 (stating that in a study involving twenty-one classes, incidents of sexism were observed in predominantly all-boys classes taught by male teachers).

³⁸ See Valerie Lee, *U.S. Dep't of Education, Single-Sex Schooling: Proponents Speak*, at 40 (1993) (stating that sexism almost "always occurred in all-male settings (i.e., classes taught by males)").

females.³⁹ But there was no consensus on cause and effect. In other words, among this community of social science researchers that have different views about single-sex education for women, there was no consensus on the question of whether or not it is the single-sex setting per se as opposed to other characteristics in some single-sex schools that cause the positive outcomes for women.⁴⁰ And this is obviously the critical point for this discussion. In fact, Lee in particular, one of the people who is cited most often for research in support of the single-sex setting for women, says that there may be "other structural and organizational characteristics of girls' schools that may account for their success, rather than gender homogeneity per se."⁴¹ These characteristics include a communal school organization [which] has a powerful positive effect on the engagement and commitment of students and teachers, and smaller size, which helps foster communal environment."⁴² Alexander Astin, author of *Four Critical Years*,⁴³ expressed very similar ideas.

I am going to end at this point by saying that I think that for purposes of both policy and law, establishing that causal relationship, if it exists, is a critical step. In part, because if there is something going on in single-sex schools that accounts for their (sometimes) positive effects on educational outcomes⁴⁴ -- and I hasten to add that if every single-sex

³⁹ See *id.* at 36, ("the [first study] found that girls attending girls' schools were favored by that experience in a number of academic and affective domains . . . [but] studies showed few positive (and no negative) effects for boys' schools.')

⁴⁰ See Epstein, *supra* note 4, at 114 (discussing the various factors involved in the successes and failures of single-sex schools).

⁴¹ See, e.g., Valerie E. Lee & Anthony S. Bryk, *Effects of Single-Sex Secondary School on Student Achievement and Attitudes*, 78 J. EDUC. PSYCH. 385 (1986) (finding that less stereotypical views of women's roles were also demonstrated in boys attending single-sex schools); see also Mikyong Kim & Rodolfo Alvarez, *Women-Only Colleges: Some Unanticipated Consequences*, 66 J. HIGHER EDUC. 641, 653 (1995) (providing an explanation of how women may have succeeded in public life).

⁴² See generally Vojdik, *supra* note 1, at 99-100 (discussing various unique characteristics of the classroom setting at the Young Women's Leadership School in Harlem).

⁴³ ALEXANDER W. ASTIN, *FOUR CRITICAL YEARS: EFFECTS OF COLLEGE ON BELIEFS, ATTITUDES AND KNOWLEDGE* (1977)

⁴⁴ See Kim & Alvarez, *supra* note 41, at 653 (discussing the reasons for the supposed success of women who attended single-sex schools).

school has these positive outcomes⁴⁵--it may well be that something other than the single-sex aspect is responsible.⁴⁶ If what we are striving to do is to provide better educational settings for all students, it seems to me that it is absolutely critical to find out if that is truly the case.

⁴⁵ See Faye Crosby et al., *Taking Selectivity into Account, How Much Does Gender Composition Matter? A Re-Analysis of M.E. Tidball's Research*, 6 NWSA J. 107-08 (1994) (challenging the claim that women who graduate from women's colleges accomplish more than women who graduate from coeducational colleges). *But see* Maureen Conlan & Camilla Warrick, 'Genius Grant' Enriches Author: Ohioan Honored for Children's Works, CIN. POST, June 14, 1995, at 1A (Antioch College, a small, coeducational undergraduate school, has produced seven MacArthur Fellows, five of whom are women).

⁴⁶ See Kim & Alvarez, *supra* note 41, at 653 (discussing the reasons for the supposed success of women who attended single-sex schools).

