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HOW TO LOOK LIKE A LAWYER

ANN JULIANO¹

Law schools often claim that they are teaching students “how to think like a lawyer.” What is less touted, however, is that students are learning how to *look* like a lawyer. They receive this message from multiple sources (faculty, alumni, peers, the career office) concerning a variety of situations: class, interviews, moot court, trial team, symposia and conferences. For law students who are first generation, these sources may be the only avenue (apart from the entertainment industry) of determining how to look like a lawyer. For law students who are transgender or gender non-binary, dress code advice dispensed along men/women categories reinforces that they are outside of the typical framework.

After discussing the role of attire in joining a community, I turn specifically to the concerns of law students of “what to wear.” Are they required to wear certain clothes? I review the formal dress codes (or lack thereof) of over 100 law schools and summarize the findings. Focusing on Title IX,² I discuss the possibility for litigation as a method to challenge dress codes. After concluding that litigation, at law schools, is an unlikely source of change, I then describe the unofficial, informal advice given by career offices. Finally, I conclude with the personal experiences of law students and graduates to conclude that many of us in the legal academy should take a moment to consider what messages we are sending about “how to look like a lawyer.”

Dress codes have been increasingly in the news, often around prom season.³ Most commonly, these stories involve issues at middle schools

¹ * Professor of Law, Villanova University Charles Widger School of Law. Many, many, MANY thanks to Abigail Wilson, Class of 2020, for her outstanding work reviewing the websites of 103 law schools, among other research, and to Hannah Schroer, Class of 2021, for her comprehensive work gathering academic sources. This essay is one part of an ongoing project to discuss dress codes in schools at a variety of levels in light of shifting fashions and developing legal frameworks.

² See *infra* Section “The Law” and discussion of Title IX.

³ See Nadra Nittle, *An Alabama Girl Had to Fight Her School to Wear a Tuxedo to Prom*, RACKED (May 22, 2018, 9:00 A.M.), <https://www.racked.com/2018/5/22/17377734/alabama-girl-fight-school-tuxedo-prom-splc>. One commentator has referred to a “pervasive panic” over dress in high schools throughout the United States. Shauna Pomerantz, *Cleavage in a Tank Top: Bodily Prohibition and the Discourses of School Dress Codes*, 53 ALTA. J. EDUC. RES. 373, 373 (2007).

or high schools.⁴ Girls are pulled aside and told to cover up or face discipline (or wait until a parent arrives).⁵ Sometimes, this discipline involves an implicit or explicit “shame suit.”⁶ There is a growing sense that dress codes primarily impact girls, and more specifically, girls of color.⁷ Additionally, trans students are told they must dress according to their assigned at birth gender.⁸

How a student dresses is a symbol of their expression of the individual self, but it is also “a symbol of expected behavior.”⁹ Thus, to be “dress-coded” is to be told by the administration that you are not behaving as expected—you are outside the norm. Dress codes police the boundaries of gender, “continually enforcing and (re)producing a dominant form of girlhood in the school.”¹⁰ Dress codes send messages at the “intersection of gender, race, ethnicity, class, sexuality, and citizenship, where boys are just as regulated as girls, but in a slightly different fashion.”¹¹

The concerns that animate the challenges to secondary school dress

⁴ See Kayla Binette, *Dress code stirs up controversy at Bangor High School*, USA TODAY (Sept. 10, 2015, 6:33 P.M.), <https://www.usatoday.com/story/news/2015/09/10/dress-code-stirs-up-controversy-bangor-high-school/72023766/>; Roy Carroll, *Students protest ‘slut shaming’ high school dress codes with mass walkouts*, GUARDIAN (Sept. 24, 2014, 3:21 P.M.), <https://www.theguardian.com/education/2014/sep/24/us-high-schools-dress-codes-protest-sexism-hemline>.

⁵ See Diane C. Lore, *‘Dress police’ crackdown continues at Tottenville High School (with video & photos)*, SILIVE (Jan. 3, 2019), https://www.silive.com/news/2014/09/post_927.html.

⁶ Eliza Murphy, *Student Forced to Wear ‘Shame Suit’ for Dress Code Violation*, ABC NEWS (Sept. 4, 2014, 5:43 P.M.), <https://abcnews.go.com/US/student-forced-wear-shame-suit-dress-code-violation/story?id=25252041> (detailing how a female student found in violation of a school’s dress code was told to wear a neon-yellow t-shirt with “DRESS CODE VIOLATION” on the front of it and red sweatpants with the same message on it).

⁷ See Sasha Jones, *Do School Dress Codes Discriminate Against Girls?*, EDUC. WK. (Aug. 31, 2018), <https://www.edweek.org/ew/articles/2018/09/05/do-school-dress-codes-discriminate-against-girls.html> (“[School dress-code policies] aren’t neutral: many target girls, and especially black girls, by regulating skirt length and headwraps,” a report on school dress codes in the District of Columbia that was compiled by the National Women’s Law Center states. ‘And the rules aren’t applied equally, either. Students report that black girls, and especially curvier students, are disproportionately targeted.’”).

⁸ See Nadra Nittle, *Students are waging war on sexist and racist school dress codes – and they’re winning*, VOX (Sept. 13, 2018, 7:10 A.M.), <https://www.vox.com/the-goods/2018/9/13/17847542/students-waging-war-sexist-racist-school-dress-codes> (“We have seen dress code enforcement problems pop up all across the country. School administrators disproportionately enforce dress codes against girls and subgroups of girls — girls of color, gender non-conforming girls, trans girls, girls with curvier body types”) (quoting Emma Roth, a fellow for the American Civil Liberties Union’s Women’s Rights Project).

⁹ Beth Hebron & Jane Workman, *Dress and Appearance Codes in Public Secondary School Handbooks*, 92:5 J. FAM. & CONSUMER SCI., 68, 68 (Jan. 2000).

¹⁰ Pomerantz, *supra* note 3, at 375; see Li Zhou, *The Sexism of School Dress Codes*, ATLANTIC (Oct. 20, 2015), <https://www.theatlantic.com/education/archive/2015/10/school-dress-codes-are-problematic/410962/>.

¹¹ Pomerantz, *supra* note 3, at 383. The social science literature on dress codes in secondary schools is vast and beyond the scope of this essay.

codes remain present in law school. Although there may be fewer instances of loss of educational opportunities, the psychic and emotional issues are still present, particularly when the message continually reinforces a traditional view of the “right way” to be professional.¹² This view of how to look like a lawyer often reinforces traditional gender roles and is completely unprepared to deal with gender non-binary students.¹³ As a high school student dealing with still developing sexuality, hearing “your clothes are wrong” can be a devastating and shaming comment. As a law student, it brings into question your professional competence before you have even graduated and sometimes, before you have ever answered an exam question.

I. I DON'T BELONG

For those of us who teach law students, we know that students (and especially 1Ls) often feel they don't belong because they believe “everyone else” understands class material and is able to answer questions quickly and correctly. These feelings are known as the Imposter Syndrome, defined by the American Psychological Association as a person “experience[ing] feelings of doubt in their abilities and worry that they are unqualified or undeserving, surely to be ‘found out’ by their peers or mentors.”¹⁴

These feelings of being a fraud and worry over being discovered as “not belonging” are sufficiently common to the point that one author's google search of “imposter syndrome” “yield[ed] over a million hits[,] and recent evidence suggests that approximately 70 percent of people will experience it at some point in their lives.”¹⁵ Specifically on point for law students, the American Bar Association, the Girls Guide to Law School, and the Harvard Law School Library Facebook page all display

¹² See JULIE RUBINGER, UNCLOAKING THE ANXIETY BEHIND PROFESSIONAL DRESS 4 (2013) <https://digital.library.ryerson.ca/islandora/object/RULA%3A3216/datastream/OBJ/view>

¹³ See Ruth Carter, *Non-Binary Lawyering: What's Courtroom Attire?*, ATT'Y WORK (Aug. 9, 2018), <https://www.attorneyatwork.com/non-binary-lawyering-ruth/> (describing a non-binary lawyer's experience navigating professional wardrobe and the difficulties the lawyer has experienced).

¹⁴ Lydia Craig, *Are you suffering from imposter syndrome?*, AM. PSYCHOL. ASS'N (Sept. 2018), <https://www.apa.org/science/about/psa/2018/09/imposter-syndrome>. The term was originally coined by Pauline Clance, PhD, a clinician at Oberlin College. See *id.*; *Imposter Syndrome? 8 tactics to combat the anxiety*, A.B.A. (Oct. 2018), [https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/tell-yourself_yet—and-other-tips-for-overcoming-impostor-syndr/ \[hereinafter 8 tactics\]](https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/tell-yourself_yet—and-other-tips-for-overcoming-impostor-syndr/ [hereinafter 8 tactics]) (“‘Imposter syndrome’ was first identified in 1978 by psychologists Pauline Rose Clance and Suzanne Imes, who described it as a feeling of ‘phoniness in people who believe that they are not intelligent, capable or creative despite evidence of high achievement.’”).

¹⁵ Craig, *supra* note 14 (citation omitted).

posts on how to combat Imposter Syndrome.¹⁶

The American Bar Association sponsored a webinar on conquering Imposter Syndrome for solo practitioners and small firms.¹⁷ One of the participants, Amy Gardner, a certified professional coach and principal at Chicago-based Apochromatik, noted women and people of color may be even more affected by Imposter Syndrome.¹⁸ Due to lack of representation, people of color may already feel like outsiders, and “[f]eeling like an impostor can exacerbate the impact of discrimination.”¹⁹

Another population of students who have concerns of “getting it right” are students known as “First-Generation” or “FirstGen.”²⁰ There’s no agreed-upon definition for First-Generation, but it is generally accepted that these students are the first in the family to attend college.²¹ In a survey of law students, “27% of law student respondents met the definition of first-generation college students.”²² FirstGen students are more likely to be female, older, black, Hispanic, and come from families with lower-incomes.²³ “Among survey participants who identified as [F]irst-[G]eneration college students, 48% listed their race or ethnicity as Hispanic.”²⁴ Further, First-Generation students in law school incur greater debt at a rate of 93% compared to 84% of non-First-Generation students.²⁵

¹⁶ See *8 tactics*, *supra* note 14; Kathryn Blair, *Dealing with Imposter Syndrome*, GIRL’S GUIDE TO L. SCH. (May 28, 2019), <https://thegirlsguidetolawschool.com/05/dealing-with-imposter-syndrome/>; Harvard Law School Library, FACEBOOK (July 19, 2018), <https://www.facebook.com/hlslibrary/posts/imposter-syndrome-laws-students-have-it-lawyers-have-it-yes-even-librarians-have-1781420831943890/> (citing Jennifer Allison, *AALL 2018 Recap: Impostor Syndrome: The Plague (or Good Fortune) of the Smart Professional*, FCIL-SIS (July 19, 2018), <https://fcilsis.wordpress.com/2018/07/19/aall-2018-recap-impostor-syndrome-the-plague-or-good-fortune-of-the-smart-professional/?platform=hootsuite>).

¹⁷ See *The Solo/Small Firm Challenge: Conquering Adversity and the Imposter Syndrome [CC]*, A.B.A. (July 16, 2018, 12:00 A.M.), <https://www.americanbar.org/events-acle/ecd/ondemand/325787833/>.

¹⁸ See *8 tactics*, *supra* note 14.

¹⁹ *Id.* (internal quotation marks omitted).

²⁰ See Grover E. Cleveland, *Helping First-Generation Lawyers Thrive*, LAW PRAC. TODAY (Apr. 13, 2018), <https://www.lawpracticetoday.org/article/helping-first-generation-lawyers/>.

²¹ See Jacqueline M. O’Bryant & Katharine Traylor Schaffzin, *First-Generation Students in Law School: A Proven Success Model*, 70 ARK. L. REV. 913, 916 (2018) (“There exists no definitive standard describing a ‘first generation student.’ Narrowly defined, a first-generation student is a student whose parents have not ever enrolled in postsecondary education. At its most broad, the definition includes those students whose parents have never earned a bachelor’s degree.”).

²² *Id.* at 931.

²³ Jennifer Engle, *Postsecondary Access and Success for First-Generation College Students*, 3 AM. ACAD. 25, 25 (2007).

²⁴ O’Bryant & Schaffzin, *supra* note 21, at 931.

²⁵ *Id.* at 932.

FirstGen students feel a sense of urgency to get it right the first time.²⁶ Importantly, for the purposes of this essay—“first-generation students report a general belief that other students understand campus culture better than they do, which contributes to a reported self-consciousness concerning their dress and speech.”²⁷ Given the lack of financial resources facing many FirstGen students, some law schools have “suit funds” so FirstGen students can meet the “professional” look.²⁸ Further compounding this problem is the image of a “lawyer” in popular culture (Elle Woods, notwithstanding). For example, a brief search of Google images for “attorney” turns up in the first ten images (all white) eight men and one woman.²⁹

These concerns manifest in a crystallized way for transgender and nonbinary students.³⁰ Trans students face greater concern over financing their education compared to the national sample.³¹ A recent report found transgender students face pressure to conform to gender norms “in terms of appearance, dress, and pronouns.”³² One study found “two-thirds of trans students reported concerns about physical/emotional safety affected how they presented their gender on campus, with many stating they dressed and presented in ways that were in closer alignment with the gender binary than was their actual gender identity.”³³

II. WHAT TO WEAR

What to wear in law school is a sufficient source of anxiety to the point that there are multiple threads on the source of all knowledge: Reddit.³⁴ More specifically, the subreddits `r/LawSchool` and

²⁶ See Jessica Tomer, *First-generation law students: struggles, solutions and schools that care*, NAT'L JURIST (March 22, 2019, 8:39 A.M.), <http://www.nationaljurist.com/national-jurist-magazine/first-generation-law-students-struggles-solutions-and-schools-care>.

²⁷ O'Bryant & Schaffzin, *supra* note 21, at 920-21.

²⁸ See Cleveland, *supra* note 20.

²⁹ See *attorney*, GOOGLE, https://www.google.com/search?q=attorney&rlz=1C1CHFX_enUS761US761&sxsrf=ALeKk02n8xeNgmfr06oMHS6eXlq7C0nqpw:1583533763120&source=lnms&tbm=isch&sa=X&ved=2ahUKEwj_6sL78oboAhWqlXIEHXOLAHUQ_AUoAnoECA0QBA&biw=1280&bih=578&dpr=1.5 (last visited Nov. 30, 2019).

³⁰ See generally Abbie E. Goldberg, *Transgender Students in Higher Education*, WILLIAMS INST., UCLA SCH. LAW (Aug. 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Aug-2018.pdf>.

³¹ See *id.* at 2 (finding “that almost 19% of trans first year students reported major concerns about financing their college education, compared to 12% of a national sample”).

³² *Id.* at 4.

³³ *Id.* at 6.

³⁴ See, e.g., *What do people wear to class in law school?*, REDDIT, https://www.reddit.com/r/lawschooladmissions/comments/an2vau/what_do_people_wear_to_class_in_law_school/ (last visited Feb. 27, 2020).

r/LawSchoolAdmissions contain numerous questions asking what to wear for a visit to law school, as well as what to wear for admitted students day and orientation.³⁵ Commonly, this question is phrased in terms of a “dress code” for law school.³⁶ Many responses suggest there is a dress code for orientation activities, but opinions are split regarding campus visit—with some arguing you should wear whatever you feel comfortable in and others arguing for “business casual.”³⁷

In response to the “what to wear to class” concern, as one might expect, some of the answers are facetious (i.e. “white tie and glove [sic] for all 1Ls” and “an ascot”).³⁸ In general, though, the responses suggested students wear what they wore to college class: comfortable, casual clothes.³⁹ One commenter set the floor—“[y]ou’re fine as long as you don’t look like a slob or a hooker.”⁴⁰ Others, however, suggested business casual was appropriate for class.⁴¹ It should be noted that when someone takes “casual” too far, the students themselves sometimes advocate for a “dress code.”⁴²

Additionally, Barbri, one of the largest providers of bar examination review courses, has a post concerning the different dress codes at play in a law student’s life.⁴³ The post is written by a law student and lists the dress codes as Casual, Business Casual, Business Formal, Cocktail, Cocktail Formal, and Black Tie.⁴⁴ It is not clear if the “casual” dress code the author expects to encounter will be at a law school event, class, or at employment.⁴⁵ At any rate, she describes a casual dress code as being “presentable, but it does mean you can leave the blazer and dress pants at home.”⁴⁶ Each dress codes is then differentiated for men and women:

Men can wear dark jeans or chinos with presentable shoes, such as

³⁵ See *id.*

³⁶ See, e.g., *Law school dress code?*, REDDIT, https://www.reddit.com/r/LawSchool/comments/ckcex3/law_school_dress_code/ (last visited Feb. 27, 2020).

³⁷ See *id.*

³⁸ *Dress Code*, REDDIT, https://www.reddit.com/r/LawSchool/comments/982wcb/dress_code/ (last visited Mar. 6, 2020).

³⁹ See *What do people wear to class in law school?*, *supra* note 34.

⁴⁰ *Dress Code for Class?*, TOP L. SCHOOLS (Mar. 12, 2014, 9:20 A.M.), <http://www.top-law-schools.com/forums/viewtopic.php?f=4&t=226063>.

⁴¹ See *What do people wear to class in law school?*, *supra* note 34.

⁴² See, e.g., *Finals time hilarity: classmates signing petition to punish students for overly casual dress*, REDDIT, https://www.reddit.com/r/LawSchool/comments/2o9zbh/finals_time_hilarity_classmates_signing_petition/ (last visited Feb. 27, 2020).

⁴³ See generally Makenzie Way, *Happy hours to formal balls: Decoding law school attire*, BARBRI (Mar. 27, 2018), <https://www.barbri.com/the1llife-law-school-attire-un-coded/>.

⁴⁴ See *id.*

⁴⁵ See *id.*

⁴⁶ *Id.*

deck shoes, and a polo shirt or knit sweater.

Women can similarly wear dark jeans, chinos, or a summer dress, with flat shoes or boots, and a plain top or sweater with minimal jewelry.⁴⁷

Interestingly, one commenter on Reddit stated, “[t]here are some schools that have dress codes but they tend not to be top tier schools. If they have a dress code it is all over their website.”⁴⁸ So, is this accurate? Do law schools have dress codes?

III. LAW SCHOOL DRESS CODES⁴⁹

Based on a review of websites of the 103 schools ranked in the top 100 in 2019 U.S. News and World Report,⁵⁰ only Baylor University Law School has a formal dress code by way of a dress code for the University as a whole.⁵¹ Under a section entitled “Student Policies and Procedures,” the University states,

[A] mature attitude should be demonstrated by the dress and appearance of students while attending classes or engaging in the other academic pursuits about the campus. Students are expected to maintain the same standards of dress and personal grooming about the campus, which would ordinarily be maintained by those engaged in other serious pursuits.⁵²

In addition, only five law schools within the top 100 even mention a dress code at all.⁵³ Columbia Law School’s Academic Rules have a

⁴⁷ *Id.*

⁴⁸ *What do people wear to class in law school?*, *supra* note 34.

⁴⁹ For a tongue-in-cheek (one hopes) call for a “Uniform Uniform Code” for law school faculty, see generally Erik M. Jensen, *Law School Attire: A Call for a Uniform Uniform Code*, 32 OKLA. CITY U. L. REV. 419 (2007).

⁵⁰ See generally *Best Law Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> (last visited Feb. 27, 2020); see also Appendix A for a list of the schools.

⁵¹ See *Student Dress and Appearance*, BAYLOR U., https://www.baylor.edu/student_policies/index.php?id=32268 (last visited Mar. 6, 2020).

⁵² *Id.* The policy goes on to explain that significant discretion is left to the Vice President of Student Life. See *id.* (expressing hope that students will accept the Vice President’s “reasonable suggestions” regarding dress code, “but refusal to comply with such specific reasonable requests will be grounds for University disciplinary action under the Student Conduct Code”).

⁵³ See *Admitted Students Guidebook*, BOS. COLL. LAW SCH. 39-40 (2018); *2019 Welcome Week*, EMORY L., <https://law.emory.edu/admission/juris-doctor/admitted-students/welcome-week.html> (last visited Mar. 8, 2020) [hereinafter *2019 Welcome Week*]; *Frequently Asked Questions for Explore Law Program*, PENN. ST. L., <https://pennstatelaw.psu.edu/admissions/explore-law/frequently-asked-questions-explore-law-program> [hereinafter *Penn. State FAQ*] (last visited Mar. 8, 2020); *Acclimating to Law School*, UNIV. N.H., <https://law.unh.edu/student-life/acclimating-law-school> (last visited Mar. 8, 2020) [hereinafter *Acclimating to Law School*]; *General Regulations: § 5.4 Demeanor*, COLUM. L. SCH., <https://www.law.columbia.edu/academic-rules/jd-rules/general-regulations> (last

subsection labeled “Demeanor” that states “[b]ehavior in every academic exercise is expected to be consistent with general attentiveness. Suitable attire is expected; casual clothing is appropriate for most occasions.”⁵⁴ The remaining four schools mention a dress code by way of saying there is no dress code.⁵⁵

Discussion on dress codes is found in either admitted students materials generally or, more specifically, material on orientation.⁵⁶ For example, Boston College’s guide for admitted students has a section entitled “Dress code?” and answers the question as follows:

No need to feel embarrassed for wondering—there’s nothing worse than feeling under- or overdressed for something. The dress code at the school is really whatever you want it to be. To the right [a picture is included], you can see some students in a classroom during a recent lunchtime event. Jeans or shorts and a t-shirt, dresses and skirts, a full suit, or a ball gown; as long as your clothing is appropriate, feel free to express your individuality and do you.⁵⁷

Emory Law, University of New Hampshire Law, and Penn State Law all contain similar descriptions (students dress casually for class, but some situations require business or more formal attire).⁵⁸

Outside of the top 100 schools, a few schools have adopted either formal dress code or what are termed “guidelines.”⁵⁹ For example, at the University of North Texas Dallas School of Law, the dress guidelines differentiate by the type of activity, such as interviews, community

visited Mar. 6, 2020).

⁵⁴ See *General Regulations: § 5.4 Demeanor*, *supra* note 53.

⁵⁵ See *Admitted Students Guidebook*, *supra* note 53; *2019 Welcome Week*, *supra* note 53; *Penn. State FAQ*, *supra* note 53; *Acclimating to Law School*, *supra* note 53.

⁵⁶ See generally *Admitted Students Guidebook*, *supra* note 53; *2019 Welcome Week*, *supra* note 53; *Penn. State FAQ*, *supra* note 53; *Acclimating to Law School*, *supra* note 53 (showing dress code information for these schools is generally found in orientation materials).

⁵⁷ *Admitted Students Guidebook*, *supra* note 53.

⁵⁸ See generally *2019 Welcome Week*, *supra* note 53 (“Emory Law is a comfortable and welcoming community. Our students typically dress casually for class, and we encourage this attire for most of Welcome Week.”); *Penn State FAQ*, *supra* note 53 (stating, in reference to a pre-law program, “[o]ur law students do not have a dress code so we do not impose one in the program either. However, many Explore Law students (as well as law students) choose to dress in business casual attire”); *Acclimating to Law School*, *supra* note 53 (“Classes at UNH Law are generally casual; however, there are other occasions outside of the classroom that demand business or more formal attire.”).

⁵⁹ See *Policies and Procedures Manual*, REGENT UNIV. SCH. OF LAW 53 (2020), https://www.regent.edu/acad/schlaw/student_life/documents/PoliciesandProceduresManual.pdf; *Student Attire Guidelines*, DALLAS COLL. L., <https://lawschool.untDallas.edu/student-attire-guidelines> (last visited Mar. 8, 2020).

engagement, the classroom, bar functions, etc.⁶⁰ Professional dress is expected for the following: “[g]oing to court (whether on field trip or during a clerkship); [a]ttending events at the Dallas Bar Association (DBA); [a]ttending most Bar functions, such as receptions; and, [a]ttending events at the [College of Law] at which professional dress is appropriate.”⁶¹ “In class, students are expected to dress neatly and appropriately.”⁶² In addition, there is a list of prohibited items of attire:

- Baseball hats, caps, nor any other headwear, unless worn as religious observance
- Sunglasses, unless medically necessary
- Pants with holes (including designer jeans with holes deliberately cut into them)
- T-shirts advertising alcohol or marijuana
- Tube, midriff, or halter tops
- Tank tops or muscle shirts
- Pajamas.⁶³

Similarly, Regent University School of Law suggests “modest casual dress” is generally appropriate on campus, as “students should recognize that they are preparing for career placement, and thus should present themselves in a manner consistent with professional standards.”⁶⁴ Certain types of attire, “recreational and beach attire such as cropped, tank, or midriff shirts, hats, or short shorts are . . . prohibited.”⁶⁵

There is one law school with a strict, explicit dress code: Liberty University School of Law.⁶⁶ Under the section of the website for current students, there is a section on “Dress Code,” stating as follows:

All students at Liberty Law are required to maintain a neat, modest, well-groomed appearance whenever the student is in the law school or at any off-campus educational site. The professional attire dress code is to be maintained whenever school is

⁶⁰ See *Student Attire Guidelines*, *supra* note 59.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Policies and Procedures Manual*, *supra* note 59.

⁶⁵ *Id.* Further, “[w]henver a distinguished guest visits the School of Law, students will be required to wear professional attire. The Associate Dean will provide notice to the student body of when this standard applies.” *Id.*

⁶⁶ See *Dress Code*, LIBERTY U. SCH. LAW, <https://www.liberty.edu/law/student-services/dress-code/> (last visited Mar. 8, 2020).

in session on the campus, including but not limited to, the administration areas, classrooms, library, and courtrooms from 8 a.m. until 5 p.m. Monday through Friday.⁶⁷

The dress code is then differentiated by male and female attire.⁶⁸ Among the requirements are that women's "[s]kirt length must be long or approximately at (or just above) the knees."⁶⁹ Additionally, "Skirt slits must be conservative, and midribs may not be exposed. All clothing must be modest. Hats are not permitted."⁷⁰

However, schools may require business casual for certain events at orientation.⁷¹ For example, looking to Emory Law again, "Thursday's attire is business professional for the Emory Law Professionalism Program."⁷² The school then provides a link for a guide to professional dress.⁷³ Interestingly, the title of the guide in the link is "GenderNeutral-BusinessProfessional" and is written in terms such as "if you are wearing a skirt" or "if you wear jewelry."⁷⁴

IV. THE LAW⁷⁵

Dress codes have been the subject of lawsuits for decades, notably beginning with concerns about hair length in the 1970s.⁷⁶ There are two main avenues for these claims: the Equal Protection Clause and Title

⁶⁷ *Id.*

⁶⁸ *See id.*

⁶⁹ *Id.*

⁷⁰ *Id.* I will admit to being most intrigued about the "After-Hours and Weekend Dress Code" and more particularly, the requirement for swimsuits:

Casual dress will be permitted in the law school after 5 p.m. on weekdays and all day on Saturday and Sunday. Casual dress consists of neat, clean, modest attire and shoes. Any messages or images on attire should be consistent with general school guidelines. Swimming pool attire should be modest for men and modest, one-piece suits for women.

Id.

⁷¹ *See, e.g., 2019 Welcome Week, supra* note 53.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See id.; build your own... business professional pook*, EMORY L., https://law.emory.edu/_includes/documents/sections/careers/GenderNeutralBusinessProfessional-11.jpg (last visited Mar. 8, 2020).

⁷⁵ The following discussion of Title IX is quite brief and surface level. I offer the basics here to understand the options for law students when faced with discriminatory dress codes. There are scores of articles and books discussing in depth the history and requirements of Title IX litigation. *See generally Title IX of the Education Amendments of 1972, 20 U.S.C.A. § 1681 Et. Seq.*, U.S. DEP'T JUSTICE, <https://www.justice.gov/crt/fcs/TitleIX-SexDiscrimination> (last visited Mar. 8, 2020).

⁷⁶ *See Trent v. Perritt*, 391 F. Supp. 171, 172 (S.D. Miss. 1975) (discussing "the multitude of lawsuits which have recently inundated the federal courts attacking hair length regulations promulgated by local public school authorities." (internal quotation marks omitted)).

IX.⁷⁷ Any law school that is part of a state-funded university is subject to challenges under the Equal Protection Clause.⁷⁸ However, a far greater proportion of law schools are part of institutions that receive federal funding⁷⁹ and, therefore, I will focus this discussion on the law known as Title IX.⁸⁰

Title IX of the Education Amendments of 1972 states,

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.⁸¹

Promulgated pursuant to Congress' Spending Clause power, Title IX prohibits educational programs that receive federal funds from discriminating on the basis of sex.⁸² The statutory language "program or activity" is sufficiently broad, covering admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment.⁸³

Over the course of Title IX's life, the Supreme Court has held there is an implied right of action under the statute⁸⁴ and that compensatory damages may be recovered for intentional violations.⁸⁵ Although it may seem that Title IX more properly applies to the undergraduate programs

⁷⁷ See *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009); see also Jeremiah R. Newhall, *Sex-Based Dress Codes and Equal Protection in Public Schools*, 12 APPALACHIAN J. LAW 209 (2013); Jennifer L. Greenblatt, *Using the Equal Protection Clause Post-VMI to Keep Gender Stereotypes Out of the Public School Dress Code Equation*, 13 U.C. DAVIS J. JUVENILE LAW & POLICY 281 (2009).

⁷⁸ See *Grutter v. Bollinger*, 539 U.S. 306, 326 (2003).

⁷⁹ For a list of private and public law schools, see *ABA-Approved Law Schools*, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools. See also Kellie Woodhouse, *Impact of Pell Surge*, INSIDE HIGHER ED. (June 12, 2015), <https://www.insidehighered.com/news/2015/06/12/study-us-higher-education-receives-more-federal-state-governments> ("Federal spending has surpassed state spending as the main source of public funding in higher education . . .").

⁸⁰ As is discussed below, as dress codes tend toward non-gender specific language but carry greater burdens for people dressing in traditionally female attire. See *infra* Section "Informal Dress Codes." Title IX carries the possibility of a disparate impact claim, which the Equal Protection Clause does not. See *Washington v. Davis*, 426 U.S. 229, 239 (1976) (holding a law or official act is not unconstitutional, based on the Equal Protection Clause, solely because it has a racially disproportionate impact).

⁸¹ 20 U.S.C. § 1681 (2018).

⁸² See *id.*

⁸³ See 45 C.F.R. § 86.2(h) (2020).

⁸⁴ See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 717 (1979).

⁸⁵ See *Franklin v. Gwinnett Cty. Pub. Sch.*, 503 U.S. 60, 75-76 (1992).

(or just athletics), Congress made clear in the Civil Rights Restoration Act of 1988 that Title IX covers all programs in an institution receiving federal funds.⁸⁶ Thus, if a university receives federal funds, the university's law school is subject to Title IX.⁸⁷

When applying frameworks to determine the presence of discrimination, courts have looked to Title VII, the anti-discrimination in employment statute.⁸⁸ Based on the interpretation of Title VII, anti-discrimination statutes have two predominant types of claims: disparate treatment and disparate impact.⁸⁹ Disparate treatment requires a showing of an intent to treat a protected class differently (and adversely) than others.⁹⁰ For example, under Title IX, an example might be that women are not eligible for grants in the area of biology. In the realm of dress codes, an example could be women are required to wear skirts and men are prohibited from wearing skirts.

As explained above, most law schools do not impose a dress code for class, but some do impose a dress code for certain events.⁹¹ Those schools which do require a dress code do not do so along gender lines.⁹² Therefore, absent a requirement by the career office or a particular faculty member, it is unlikely that there is a disparate treatment claim under Title IX (or the Equal Protection Clause for that matter).

However, the second type of claim is known as a disparate impact claim.⁹³ The Supreme Court first recognized this claim in *Griggs v. Duke Power Co.*⁹⁴ In *Griggs*, the employer previously discriminated against African-Americans in the hiring and assigning of employees.⁹⁵ Upon the passage of Title VII, the employer ended its facially discriminatory hiring policies, but required a high school diploma and a passing score on two professionally-developed aptitude tests to qualify for placement in the higher paying areas of the company.⁹⁶

⁸⁶ See 20 U.S.C. § 1687 (2018) (defining "program or activity" and "program" in the context of Title IX and its broad scope).

⁸⁷ See *id.* ("For the purposes of this chapter, the term 'program or activity' and 'program' mean all the operations of . . . a college, university, or other postsecondary institution, or a public system of higher education . . .").

⁸⁸ See *Peltier v. Charter Day Sch., Inc.*, 384 F. Supp. 3d 579, 589 (E.D.N.C. 2019).

⁸⁹ See *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009).

⁹⁰ See *id.*

⁹¹ See *supra* Section "Law School Dress Codes."

⁹² See *id.*

⁹³ See *Ricci*, 557 U.S. at 577.

⁹⁴ See *Griggs v. Duke Power Co.*, 401 U.S. 424, 428, 431 (1971) (holding Title VII prohibits "not only overt discrimination but also practices that are fair in form, but discriminatory in operation").

⁹⁵ See *id.* at 426-27.

⁹⁶ See *id.* at 427-28. "Neither [test] was directed or intended to measure the ability to learn to

The Court found Title VII prohibits not only intentional discrimination, but also practices that are “discriminatory in operation.”⁹⁷ “[A]bsence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as ‘built-in headwinds’ for minority groups and are unrelated to measuring job capability.”⁹⁸ Thus, for an employment discrimination case, to meet a prima facie case under disparate impact, plaintiffs must show that a neutral practice operates to impact disproportionately against a minority group.⁹⁹ If plaintiffs accomplish that task, the employer must, in turn, prove the practice was motivated by “business necessity.”¹⁰⁰ “If an employment practice which operates to exclude [a minority group] cannot be shown to be related to job performance, the practice is prohibited.”¹⁰¹ A showing of intent to discriminate is not required for a disparate impact claim.¹⁰²

A disparate impact claim regarding a dress code would require evidence that the dress code is being implemented or enforced in a way to cause an adverse effect on a protected class.¹⁰³ Thus, even if a dress code is neutral (for example, the code requires a “professional” look), but the dress code is enforced against women more than men, or against trans students more than cisgender students, then there could be a prima facie case of disparate impact.¹⁰⁴ However, a student would still need to show a specific practice caused them to suffer an adverse action.¹⁰⁵ For instance, has the student been denied an interview? Was the student told to leave school and change?¹⁰⁶

Despite the fact courts strive to interpret the civil rights statutes similarly in some situations,¹⁰⁷ there has been much debate as to whether

perform a particular job or category of jobs.” *Id.* at 428.

⁹⁷ *Id.* at 431.

⁹⁸ *Id.* at 432.

⁹⁹ *See id.* at 430 (describing that the company’s facially neutral practice of requiring all applicants and employees to take tests for employment and promotions disparately impacted African-Americans because African-Americans had long received inferior education in North Carolina due to segregated schools).

¹⁰⁰ *Id.* at 431.

¹⁰¹ *Id.*

¹⁰² *See Ricci v. DeStefano*, 557 U.S. 557, 578 (2009).

¹⁰³ *See* 42 U.S.C. § 2000e-2(k)(1)(A)(ii).

¹⁰⁴ For rationale of why this type of unequal enforcement of a school dress code could be prima facie evidence of disparate impact, *see id.*

¹⁰⁵ *See* 42 U.S.C. § 2000e-2(k)(1)(A)(ii).

¹⁰⁶ This aspect is more present in cases in secondary schools where girls are pulled out of class or sent home for dress code violations. *See supra* notes 9-11 and accompanying text.

¹⁰⁷ *See, e.g., Preston v. Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994) (stating “most courts that have addressed the question have indicated that Title VII principles should be applied to Title IX actions, at least insofar as those actions raise employment

the disparate impact claim is available under Title IX.¹⁰⁸ Much of the argument for allowing a disparate impact claim is based on analogies to such claims under other non-discrimination statutes.¹⁰⁹ Title IX was modeled after Title VI, a statute which prohibits discrimination on the basis of race by programs (not limited to educational programs) receiving federal funds.¹¹⁰ According to the Department of Justice Title IX Legal Manual (“Manual”),¹¹¹ which is certainly outdated but is still available online, “federal agencies have uniformly implemented Title IX in a manner that incorporates and applies the disparate impact theory of discrimination.”¹¹² More specifically, this means regulations interpreting the statute (as opposed to the explicit terms of the statute) prohibit practices which result in a disparate impact.¹¹³

Therefore, for a Title IX claim, the Manual requires an agency to determine the recipient of funds utilized a facially neutral policy that had a disproportionate impact on a protected class.¹¹⁴ Then, the question turns to whether the recipient can establish a “substantial legitimate justification” for the policy, that is, there must be an “educational necessity” for the policy.¹¹⁵

However, the Manual states courts have upheld the use of disparate impact theory as “lawful and proper exercises of agencies’ delegated authority, even where the challenged actions or practices do not constitute intentional discrimination.”¹¹⁶ As mentioned above, this section of the Manual is outdated.¹¹⁷ The one Title IX case the Manual cites is from

discrimination claims”).

¹⁰⁸ See *Pfeiffer v. Marion Ctr. Area Sch. Dist.*, 917 F.2d 779, 788 (3rd Cir. 1990) (“Neither the Supreme Court nor this court has decided specifically whether intent is a necessary element of a Title IX claim.”).

¹⁰⁹ See James S. Wrona, *Eradicating Sex Discrimination in Education: Extending Disparate-Impact Analysis to Title IX Litigation*, 21 PEPP. L. REV. 1, 20 (1993).

¹¹⁰ See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 694-95 (1979); see also 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

¹¹¹ See U.S. Dep’t. of Justice, *Title IX Legal Manual*, JUSTIA (Jan. 11, 2001), <https://www.justia.com/education/docs/title-ix-legal-manual/>.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ *Id.*

¹¹⁷ For instance, to show the outdatedness of the Manual, footnote 48 of the Manual refers to a case with the subsequent history of “cert. granted sub. nom.” See U.S. Dep’t of Justice, *supra* note 111. However, that case was decided by the Supreme Court in 2001. See *generally Alexander v. Sandoval*, 532 U.S. 276 (2001).

1987¹¹⁸ and in that case the court explicitly relies on Title VI interpretations to find that a Title IX plaintiff may bring a claim for disparate impact.¹¹⁹ As explained below, the reliance on Title VI jurisprudence has become problematic since the Manual was written.

In 2001, in *Alexander v. Sandoval*, the Court held there is no private right of action to enforce disparate impact regulations under Title VI, at least in part because the statute prohibits intentional discrimination.¹²⁰ Further, in light of the fact that Title IX was patterned after Title VI, courts have applied this reasoning to claims of disparate impact under Title IX regulations.¹²¹ Thus, in Title IX cases after *Sandoval*, courts examined claims to see if there was a “*Sandoval*” issue—are the plaintiffs actually bringing a disparate impact claim?¹²²

Further complicating the issue of challenges to dress codes is a possible carve out for dress codes under Title IX, rendering them not amenable to challenge.¹²³ I say “possible” carve out because the argument that Title IX does not cover dress codes rests on the argument that a revocation of a regulation prohibits a claim.¹²⁴ When originally enacted, the regulations interpreting Title IX stated, “in providing any aid, benefit, or service to a student, recipients . . . shall not on the basis of sex, discriminate against any person in the application of any codes of appearance.”¹²⁵ However, in 1982, this provision was withdrawn in order to “permit[] the [Education Department] to concentrate its resources on

¹¹⁸ See U.S. Dep’t of Justice, *supra* note 120; see generally *Haffer v. Temple Univ. of the Commonwealth Sys. of Higher Ed.*, 678 F. Supp. 517 (E.D. Pa. 1987).

¹¹⁹ See *id.* 539-40.

¹²⁰ See *Alexander*, 532 U.S. at 285-86. In that case, applicants for driver’s licenses challenged Alabama’s Department of Public Safety’s practice of administering the examination in English only, claiming that such a practice had a disparate impact based on the race. See *id.* at 278-79.

¹²¹ *Tsuruta v. Augustana Univ.*, No. 4:15-CV-04150-KES, 2015 U.S. Dist. LEXIS 136796, at *8-9 (D.S.D. Oct. 7, 2015) (“[B]ecause Title IX is patterned on Title VI, then a disparate impact cause of action under Title IX could not be successfully pursued.”).

¹²² See, e.g., *Mayerova v. E. Mich. Univ.*, 346 F. Supp. 3d 983, 991 (E.D. Mich. 2018) (explaining that *Sandoval* is not implicated here because plaintiffs are not attempting to enforce disparate impact claims); *King v. DePauw Univ.*, No. 2:14-cv-70-WTL-DKL, 2014 U.S. Dist. LEXIS 117075, at *28 (S.D. Ind. Aug. 22, 2014) (“King’s argument really seems to be that DePauw’s actions have had a disparate impact on male students, but the Court is unaware of any authority that permits a disparate impact claim under Title IX.”).

¹²³ See Carolyn Ellis Staton, *Sex Discrimination in Public Education*, 58 *Miss. L. J.* 323, 334 (1988).

¹²⁴ See *id.*

¹²⁵ *Amendment to Title IX Regulations*, NAT’L ARCHIVES & RECORDS ADMIN. (July 1, 1982), <https://www.archives.gov/files/news/john-roberts/accession-60-89-0372/doc016.pdf>; *Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting From Federal Financial Assistance*, 47 Fed. Reg. 32526-02 (July 28, 1982) [hereinafter *Nondiscrimination on the Basis of Sex*] (stating that § 106.31(b)(5) was later repealed).

cases involving more serious cases of sex discrimination.”¹²⁶ Further, the Secretary of Education stated, “[d]evelopment and enforcement of appearance codes is an issue for local determination.”¹²⁷ This removal has led at least one commentator, law professor Carolyn Ellis Staton, to state, “Title IX has been rendered largely ineffective as a method of challenging dress codes.”¹²⁸ As Professor Stanton notes, “some commentators believe a challenge under Title IX might still be viable.”¹²⁹ I am one of those commentators. Although the explicit regulation dealing with appearance standards may have been withdrawn, the regulations do not prohibit the application of Title IX to dress codes. Further, there has been a change in society in the understanding of the impacts of dress codes on students¹³⁰ and thus, the dismissal of such complaints as not sufficiently serious would not carry the same weight as when courts felt swamped with concerns over hair length.¹³¹

Some courts, though, have dismissed claims brought by students over dress codes the students claimed to be discriminatory. In *Sturgis v. Covich County School District*, a student who identifies as female “but prefers conventionally masculine clothing” opted to wear a tuxedo for her yearbook portrait instead of the drape the District specified for females.¹³² The school then excluded her portrait from the yearbook.¹³³ The plaintiff noted the school received funds from the Department of Agriculture whose regulations interpret Title IX as prohibiting “discriminat[ion] against any person in the application of any rules of appearance.”¹³⁴ The court noted the discrepancy caused by the withdrawal of the same language by the Secretary of Education as discussed above and held:

The [Supreme] Court has not attempted to resolve the apparent dispute No holding will be made at this point, but the parties

¹²⁶ Nondiscrimination on the Basis of Sex, *supra* note 125.

¹²⁷ *Id.*

¹²⁸ Staton, *supra* note 123, at 334.

¹²⁹ *Id.*

¹³⁰ See, e.g., Kira Barrett, *When School Dress Codes Discriminate*, NEA TODAY (July 24, 2018), <http://neatoday.org/2018/07/24/when-school-dress-codes-discriminate/>.

¹³¹ *Trent v. Perritt*, 391 F. Supp. 171, 172 (S.D. Miss. 1975) (discussing litigation in which the “Fifth Circuit was faced with another of the multitude of lawsuits which have recently inundated the federal courts attacking hair length regulations promulgated by local public school authorities” (internal quotation marks omitted)).

¹³² *Sturgis v. Covich Cty. Sch. Dist.*, No.: 3:10-CV-455-DPJ-FKB, 2011 U.S. Dist. LEXIS 105065, at *2 (S.D. Miss. Sept. 15, 2011).

¹³³ *Id.*

¹³⁴ *Id.* at *12-13.

are directed to better address the conflicting regulations if the District again files a dispositive motion.¹³⁵

More recently, another district court held Title IX did not apply to a uniform policy. In *Peltier v. Charter Day School*, plaintiffs challenged a public charter school's "uniform policy, which requires female students to wear 'skirts, skorts, or jumpers' . . . and male students to wear shorts or pants."¹³⁶ The plaintiffs asserted that the "skirts requirement forces them to wear clothing that is less warm and comfortable than the pants their male classmates are permitted to wear and, more importantly, restricts plaintiffs' physical activity, distracts from their learning, and limits their educational opportunities."¹³⁷ The court discussed the revocation of the appearance code and found that Title IX does not "directly speak to the 'precise question' of school uniform policies or appearance codes," therefore, the matter was left to agency discretion.¹³⁸ Because Congress had not disturbed the agency's interpretation, the court found the determination to leave appearance codes to the local level was not an arbitrary or capricious interpretation.¹³⁹ In that light, the court dismissed the plaintiffs' Title IX claims.¹⁴⁰

However, the Seventh Circuit found a violation of Title IX when boys playing interscholastic basketball were required to keep their hair short and girls playing sports were not.¹⁴¹ Although the decision predominantly focuses on the Equal Protection Clause challenge, the court did find a violation of Title IX.¹⁴² "The hair-length policy is applied only to the boys team, with no evidence concerning the content of any comparable grooming standards applied to the girls team."¹⁴³ Because the sex discrimination was apparent, the court found the plaintiffs were entitled to judgment on their claims.¹⁴⁴ Nowhere in the opinion does the court

¹³⁵ *Id.* at *13-14.

¹³⁶ *Peltier v. Charter Day Sch., Inc.*, 384 F. Supp. 3d 579, 584 (E.D.N.C. 2019).

¹³⁷ *Id.*

¹³⁸ *Id.* at 590. The court did, however, find that the policy violated the Fourteenth Amendment's Equal Protection Clause. *Id.* at 597.

¹³⁹ *Id.* at 590.

¹⁴⁰ *See id.* (holding that defendants were entitled to summary judgment on the Title IX claims).

¹⁴¹ *See Hayden ex rel A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 571-72 (7th Cir. 2014) (holding that the hair-length policy discriminated against plaintiff's son since the policy did not apply to girls).

¹⁴² *See id.* at 583 (noting that the finding of a Title IX violation was based on the same reasoning discussed in the Equal Protection Clause violation).

¹⁴³ *Id.*

¹⁴⁴ *See id.* at 571 (finding that "[b]ecause the hair-length policy on its face treats boys and girls differently . . . the Haydens [are entitled] to judgment on their sex discrimination claims").

discuss the revocation of the regulation on appearance codes.¹⁴⁵ It is nonsensical to suggest a hair length policy is not an “appearance” code if a uniform policy falls within an appearance code.¹⁴⁶ Thus, there is a strong argument, particularly in the Seventh Circuit, that appearance codes which treat female and male students differently are subject to challenge under Title IX.

In summary, then, facially discriminatory dress codes may be challenged under Title IX, subject to an argument about the 1982 revocation. A claim based on disparate impact, however, will be harder to bring.

V. INFORMAL DRESS CODES

Despite the lack of a formal dress code in most law schools, there is a great deal of informal advice dispensed to students. The advice can come from faculty, administrators, and peers. Perhaps the primary source of this informal advice are career offices.¹⁴⁷ Of the Top 103 law schools reviewed, 58 offered attire advice.¹⁴⁸ Of those 58 schools, eleven had the information posted on a part of their website accessible only to students with a login.¹⁴⁹

Of the remaining forty-seven schools, thirty did not offer gender specific advice and seventeen did.¹⁵⁰ By “gender specific,” I mean the schools separated their advice into subheadings of “Women” and “Men.”¹⁵¹ The advice to women focuses on skirt length, blouse style, and make-up.¹⁵² Skirt length should be “modest,”¹⁵³ a length so that one can “sit comfortably”¹⁵⁴ or “an appropriate length for sitting,”¹⁵⁵ or not

¹⁴⁵ See generally *id.* (lacking a statement in the opinion about the revocation of the regulation prohibiting sex discrimination based on appearance).

¹⁴⁶ See *Peltier v. Charter Day Sch., Inc.*, 384 F. Supp. 3d 579, 590 (E.D.N.C. 2019) (explaining that matters of school uniform policies falling under appearance codes are left to agency’s discretion to decide).

¹⁴⁷ See *infra* p. 30-32 (displaying which law school career offices from the top 103 law schools offer dress code advice to their students).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ See *id.*

¹⁵¹ See, e.g., *EIW Orientation: Interview Skills Workshop*, N.Y.U. L., 1, 11 (2017), http://www.law.nyu.edu/sites/default/files/upload_documents/CombinedHandouts.pdf.

¹⁵² See *id.*

¹⁵³ *What To Wear*, OHIO ST. U. MORITZ C. L., <https://moritzlaw.osu.edu/careers/students/career-toolkit/interviewing/what-to-wear/> (last visited Mar. 26, 2020).

¹⁵⁴ See *EIW Orientation: Interview Skills Workshop*, *supra* note 151.

¹⁵⁵ *Interviewing*, ST. LOUIS U. SCH. L., <https://www.slu.edu/law/career-services/for-students/interviewing.php> (last visited Mar. 26, 2020).

shorter than two inches above the knee.¹⁵⁶ Women are advised not to wear any blouses that are sheer, lacy, too tight, too low, or too revealing.¹⁵⁷ Hose is a must in a sheer or neutral color.¹⁵⁸ Law schools recommend pumps which should be plain, dark, closed-toe, and of modest height or a medium to low heels.¹⁵⁹ Additionally, jewelry should be low key and worn sparingly.¹⁶⁰ Hair should be conservative and neat.¹⁶¹ The most commonly offered advice to men dealt with shirts.¹⁶² Shirts should be long-sleeved and white or blue in color.¹⁶³ Men should wear a belt and a “conservative” tie.¹⁶⁴ There was oddly a significant amount of advice about socks: you should wear them and they should be dark.¹⁶⁵ As for grooming, as Duke Law puts it: “If your hair is long, trim it; if you have an earring, don’t wear it; if you have a beard or mustache, trim it.”¹⁶⁶ Richmond Law answers the “Men: Should I Shave?” question with, “[a] clean-shaven face is most appropriate in the conservative legal profession. If you opt to keep facial hair, it should be trimmed and well maintained.”¹⁶⁷

Some schools who do not divide the advice to explicit “Men” and “Women” categories still offer advice that is gender coded—focusing on skirt length or makeup.¹⁶⁸ Other schools offer general advice: a

¹⁵⁶ *Interviewing*, DUKE U. SCH. L., <https://law.duke.edu/career/students/llm/resources/interview/> (last visited Mar. 26, 2020).

¹⁵⁷ See *EIW Orientation: Interview Skills Workshop*, *supra* note 151; see also DUKE U. SCH. L., *supra* note 156; *What To Wear*, *supra* note 153.

¹⁵⁸ See DUKE U. SCH. L., *supra* note 156; see also *What To Wear*, *supra* note 153; Richmondlawcdo, *FAQS on OCI and Other Interviews*, RICH. SCH. L. CAREER DEV. OFF. (July 31, 2019), <https://blog.richmond.edu/richmondlawcdo/2019/07/31/faqs-on-oci-and-other-interviews/>.

¹⁵⁹ See DUKE U. SCH. L., *supra* note 156; *Professional & Business Casual Attire*, UNC STUDENT AFF. (2013), https://careers.unc.edu/sites/careers.unc.edu/files/documents/What%20to%20Wear_0.pdf; *What To Wear*, *supra* note 153; Richmondlawcdo, *supra* note 158.

¹⁶⁰ *Career Development & Opportunities Handbook*, UNIV. DENVER STURM C. L. 1, 61 <https://www.law.du.edu/sites/g/files/lmucqz461/files/2019-07/cdc-handbook.pdf> (last visited Mar. 26, 2020).

¹⁶¹ See *What To Wear*, *supra* note 153; DUKE U. SCH. L., *supra* note 156; *Career Development & Opportunities Handbook*, *supra* note 160; *EIW Orientation: Interview Skills Workshop*, *supra* note 151.

¹⁶² See DUKE U. SCH. L., *supra* note 156; see also *EIW Orientation: Interview Skills Workshop*, *supra* note 151.

¹⁶³ See *EIW Orientation: Interview Skills Workshop*, *supra* note 151; see DUKE U. SCH. L., *supra* note 156; *What To Wear*, *supra* note 153.

¹⁶⁴ See *What To Wear*, *supra* note 153.

¹⁶⁵ See *EIW Orientation: Interview Skills Workshop*, *supra* note 151; DUKE U. SCH. L., *supra* note 156; *What To Wear*, *supra* note 153.

¹⁶⁶ DUKE U. SCH. L., *supra* note 156.

¹⁶⁷ Richmondlawcdo, *supra* note 158.

¹⁶⁸ See, e.g., *Preparation*, YALE L. SCH., <https://law.yale.edu/student-life/career-development/students/toolkit-student-job-seekers/interviewing/preparation> (last visited Feb. 14, 2020).

“professional suit,” “conservative” clothes, and minimal jewelry.¹⁶⁹ Drexel Law, for example, admonishes students to know “the difference between dressing for the courtroom and dressing for a night out with friends.”¹⁷⁰

Although the majority of career offices dispense advice along a gender-binary scheme, a few schools explicitly address the issues faced by transgender students.¹⁷¹ Harvard offers this advice: “Dress professionally for the gender you choose to present or in gender-neutral attire.”¹⁷² Marquette notes, “[e]ach person’s unique identity and culture can influence what is worn to an interview.”¹⁷³ University of California Berkeley lists their advice to “suits sold in a women’s department” (which required two more slides to discuss) and “suits sold in a men’s department.”¹⁷⁴ Similarly, Yale offers advice by type of attire without mentioning who might be wearing it: “If worn, skirts should be around knee length. Wearing pantyhose (as opposed to bare legs) is the more conservative approach. If worn, ties should be tasteful in color and design.”¹⁷⁵

A few law schools also link to university policies which discuss attire for transgender students.¹⁷⁶ The University of Georgia, which otherwise posted gendered advice, added as asterisk on the top of the page: “For information about dress as it relates to gender expression or cultural identity, we encourage you to make an appointment with your career consultant.”¹⁷⁷ The University of Houston was somewhat more

¹⁶⁹ Richmondlawcd, *supra* note 158; DUKE U. SCH. L., *supra* note 156.

¹⁷⁰ *Interviewing Tips & Sample Questions*, DREXEL U. THOMAS R. KLINE SCH. L., <https://drexel.edu/law/studentLife/careers/career-strategies-office/Interviewing/> (last visited Feb. 14, 2020).

¹⁷¹ See, e.g., *Professionalism Guide*, HARV. L. SCH., <https://hls.harvard.edu/dept/opia/job-search-toolkit/professionalism-guide/> (last visited Feb. 14, 2020).

¹⁷² *Id.*

¹⁷³ Career Services Ctr., *Interview Attire*, MARQUETTE U., <https://www.marquette.edu/career-services/students/interview-attire.php> (last visited Feb. 14, 2020).

¹⁷⁴ Career Dev. Office, *EIW Interview Attire: Shopping Basics*, U.C., BERKELEY, SCH. L., https://www.law.berkeley.edu/wp-content/uploads/2019/05/EIW-Interview-Attire_-Shopping-Basics-2018.pdf (last visited Feb. 13, 2020).

¹⁷⁵ See YALE L. SCH., *supra* note 168; see also *Interview Attire*, *supra* note 173 (“If wearing a tie, make sure it matches and extends below the belt line.”).

¹⁷⁶ See Career Ctr., *Professional Attire*, U. GEORGIA, http://career.uga.edu/interviewing/professional_attire#targetText=Wear%20a%20conservative%2C%20two%2Dpiece,navy%2C%20black%2C%20or%20brown (last visited Feb. 14, 2012); Univ. of Houston Career Services, *COOG Careers Career Workbook*, U. HOUSTON, https://www.uh.edu/ucs/students/_files/coog-careers.pdf#page=28 (last visited Feb. 14, 2020); Ctr. for Career Dev., *Dress for Success: Business Professional*, U. TENN. KNOXVILLE, <https://career.utk.edu/wp-content/uploads/sites/56/2018/08/Gender-Neutral-Professional.pdf> (last visited Feb. 14, 2020).

¹⁷⁷ See *Professional Attire*, *supra* note 176.

encouraging:

REGARDING GENDER IDENTITY AND ATTIRE: Your research on a particular employer or field, in addition to your comfort level, will assist in your choice to wear clothes associated with your gender identity or to wear gender-neutral clothing.¹⁷⁸

The University of Tennessee career office has the most explicit statement on a slide with specific advice to trans professionals:

Whether to dress according to traditional, cisgender norms or wear clothes that allow you to express your gender identity can be a difficult decision and will likely be impacted by the employer or industry. For organizations that are more LGBTQ-inclusive, you may feel comfortable wearing clothes typically associated with your gender identity. Some candidates may choose to dress in gender-neutral, androgynous clothing. Utilize resources like the HRC Corporate Equality Index (hrc.org) to get a sense of how open and accepting a company is. Career Consultants are also available to talk about your specific situation.¹⁷⁹

Additionally, a number of law schools link to their university's career office which then provides "Dress for Success" advice, often including the suggestion to dress "conservatively."¹⁸⁰ Of the nine university policies I reviewed, four gave gender specific advice,¹⁸¹ four did not differentiate by gender at all,¹⁸² and one provided advice on suits typically associated with one gender but did not label them as such.¹⁸³ The

¹⁷⁸ Univ. of Houston Career Services, *supra* note 176.

¹⁷⁹ *Dress for Success: Business Professional*, *supra* note 176.

¹⁸⁰ See, e.g., Career Ctr., *Professional Dress*, VILL. U., <https://www1.villanova.edu/villanova/provost/careers/plan/tips/dress.html> (last visited Feb. 14, 2020); see also Univ. Career Services, *Dress for Success*, GA. ST. U., <https://career.gsu.edu/dress-for-success/> (last visited Feb. 14, 2020) ("Remember, you want to **impress the boss**, not your buddies. So stick to a conservative look rather than flashy and trendy.") (emphasis in original).

¹⁸¹ See *Professional Attire*, *supra* note 176; *Dress for Success*, *supra* note 180; Mānoa Career Ctr., *Determining Appropriate Job Attire*, U. HAW. MĀNOA, <http://manoa.hawaii.edu/careercenter/students/career-fair/determining-appropriate-job-attire/> (last visited Feb. 14, 2020); *Professional Dress*, U. S. CAROLINA, https://www.sc.edu/study/colleges_schools/cic/internal/undergraduate_student_services/career_services/interviewing/professional_dress.php (last visited Feb. 14, 2020).

¹⁸² See *Professional Dress*, *supra* note 180; Career Res. Ctr., *Dress for Success*, PENN ST. STUDENT AFF., <https://studentaffairs.psu.edu/career/resources/interviewing/dress> (last visited Feb. 14, 2020); *COOG Careers Career Workbook*, *supra* note 176; UNLV Career Services, *Career Handbook*, U. NEV., LAS VEGAS, https://www.unlv.edu/sites/default/files/page_files/27/CareerServices-Handbook.pdf (last visited Feb. 14, 2020).

¹⁸³ Office of Career Services, *Professional Dress*, U. N.M., <https://career.unm.edu/jobs-internships/professional-dress.html> (last visited Feb. 14, 2020).

University of Hawaii had far more advice for women than men, notably excluding the absence of a business casual category for women (apparently, Aloha shirts are a guy thing).¹⁸⁴

VI. "SHAVE AND DON'T WEAR PINK SHORTS"

At the end of all this advice, what result? What other advice and from what avenues are law students learning how to Look Like a Lawyer? I conducted an extremely unscientific study by posing the question in my classes and on Facebook and Twitter for personal experiences with dress codes and attire advice.

I asked current and former law students for their experiences with learning appropriate attire and grooming. Perhaps tellingly, I received very few responses by men and those I did focused on the need to shave their beards (which, they all ignored). Women, however, had far more stories concerning comments from professors and career offices about their clothing choices.¹⁸⁵

The informal application of dress codes began as early as orientation. One woman recalls talking about what to wear to class and "the consensus was not to wear sweatpants." A graduate from a different law school also recalls being told during orientation that the legal market in her area is "one of the most conservative in the country" and that women need to wear "neutrals, high heels, skirts, essentially very modest clothes." Another graduate recalls being told (but not entirely by whom) students should "dress appropriately for class" because they should want their professors to view them as peers.

As law school progressed, one woman recalled being told to cover her tattoos and (albeit from her undergraduate career office) not to wear a skirt for an interview because her legs are "too muscular." For those in skirts, stockings are a must! One graduate recalls this as a requirement at an externship and another recalls wearing them to interviews "in case the interviewer was conservative."

A graduate from several years ago told me she has yet to wear pants to court and, "it had to come from somewhere." Another law school graduate said, "it was kind of an unspoken rule to wear your hair back in a low pony tail (seriously I remember looking around [the lobby] and we were all in black suits, some navy with a light colored shirt and a low

¹⁸⁴ See Mānoa Career Ctr., *supra* note 181.

¹⁸⁵ Attire critiques also come from judges for Moot Court and Trial Team competitions. In fact, often the most jarring stories come from these situations.

pony tail. . .which is not universally flattering]) take out any extra earrings or piercings you may have, and wear neutral colors and lowish heels. We also all wore skirts in case the interviewers were old fashioned or traditional.”¹⁸⁶

In contrast to the stories of women wearing the muted, understated clothes, a male student told me that he wears “flashier” outfits—brighter colors, jackets that aren’t the same fabric as his pants—and he receives compliments for his fashion sense. He also said that he knew women wouldn’t receive such positive feedback for similar outfits.

There was a consensus among the women in one of my classes that they feel more aggressive when they wear a pants suit. “It’s a choice I have to decide to make.” “It’s a more masculine look so I have to contemplate if I really want that look for the interview.”

Graduates also recall being admonished by faculty and people conducting mock interviews for their choice of nail polish. “I remember that my (female) interviewer wrote comments that my nail polish and makeup were not ‘neutral’ enough.” Another recent graduate received written feedback on her performance in class which “commented on the color of my nails (which were also pink if I remember correctly). She [the professor] told me that no one was going to take me seriously if I chose to paint my nails that color. My nails had nothing to do with my performance in her class.” Another lawyer reported she was told in law school never to wear her hair down and no pink nail polish. She also reports that she has ignored this advice.

These stories may seem to deal with trivial matters. But these attorneys recall these incidents years after graduation. Being told you do not look right is unsettling and upsetting when you are trying to struggle with all the other aspects of law school. Other stories, however, are more egregious. One former law student specifically had her clothes called into question:

One day I wore pink J Crew shorts to class. They were not inappropriate. They didn’t have holes in them. There was nothing ridiculous about them. They were just shorts that were hot pink. [The professor] saw me outside the building and said “ah yes hot pink shorts because that is exactly what a future attorney

¹⁸⁶ I should note this graduate’s law school does not have posted attire advice. Thus, reading this comment after reviewing informal attire advice was somewhat startling in how closely it followed explicit advice for women and used some of the exact words (neutral, traditional, lowish heels) used in posted attire guides.

should wear.”

Another student from a school in the Midwest altered the classes she took because of gendered attire requirements. “I was told you had to wear heels in mock trial. I had broken my foot and am not allowed (doctor’s orders) to wear heels anymore, so I decided not to do any of these courses that might cause a problem.”

Perhaps most disturbing is this line of comments: “Before a trial team competition in law school, I was told all the women had to wear skirts because judges liked us to show off our legs.” Discussing an externship, a (blonde) student said she was told that she was being staffed on a case because the judge likes blondes. Finally, a student related a story concerning a female student being told in feedback from a mock argument that she should take off her glasses so everyone can see “her pretty eyes.”

Finally, one woman (not the same blonde from above) explained she has long blonde hair, wears pink nail polish (which, as we have learned, is apparently a transgression in the legal market), and dresses on the feminine side. She said she finds herself engaged in self-criticism on the way into interviews. “They won’t hire me. I look too girly.”

VII. SO WHAT?

To be clear, I am not unsympathetic to career offices and others dispensing attire advice. Taken in the best light, they are responding to what they perceive to be a conservative profession and they are seeking to place the students in the best position possible to secure employment.

When looking like a lawyer means a suit, and particularly a “well-pressed” suit, there are apparent class issues.¹⁸⁷ Many schools have tried to address these issues by creating “closets” from which students can borrow a suit for interviews or awarding a small grant to purchase a suit.¹⁸⁸ This does not, of course, address the costs of dry cleaning.

Further, hearing “be modest or you won’t get a job; shave and look corporate or you won’t get a job,” draws students’ energy away from the focus of their legal education. Show off your legs, unless they are “too muscular,” is just a pile of nonsense and reminds students who wear suits with a skirt that they are being judged on far more than their legal

¹⁸⁷ *Professional Attire Closet*, PENN ST. STUDENT AFF., <https://studentaffairs.psu.edu/career/programs/events-workshops/PAC> (last visited Feb. 14, 2020).

¹⁸⁸ *See, e.g., id.*

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abilities. And when women decide to wear pants, they must stop and consider if being “aggressive” is the right message for the interview.

In the end, even though there may not be a legal violation present, all of us in the legal academy can recognize the messages we are sending about the image of “Lawyer.” As the student who found herself engaged in self-criticism stated, “I shouldn’t be worrying about if I look too girly.”

Appendix A

(* denotes University wide policy or advice)

School	Dress Code Y/N	Advice From Career Office	Gender Specific Advice
Harvard Law School	N	Y	N
Yale Law School	N	Y	N
Stanford Law School	N	N	n/a
Univ. of Chicago	N	N	n/a
Columbia	Y	Y	login required
New York Univ. Law	N	Y	Y
Penn Law	N	Y	N
UVA	N	Y	login required
UMichigan - Ann Arbor	N	Y	N
Duke	N	Y	Y
Northwestern	N	N	n/a
UCal - Berkley	N	Y	Y
Cornell	N	N	n/a
Georgetown	N	Y	N
UCLA	N	Y	Y
UT - Austin	N	Y	Y
USC	N	N	n/a
Vanderbilt	N	Y*	N
WashU - St. Louis	N	N	n/a
U of Minnesota	N	N	n/a
Notre Dame	N	Y	N

GWU	N	Y	Y
Boston U	N	Y	login required
UCal - Irvine	N	Y	N
U of Alabama	N	Y	N
Emory	N	N	n/a
Arizona State University	N	N	n/a
Boston College	N	Y	login required
University of Georgia	N	Y*	Y
University of Iowa	N	N	n/a
UCal - Davis	N	N	n/a
University of Florida	N	N	n/a
Wake Forest	N	Y	N
IU Bloomington	N	N	n/a
Ohio State University	N	Y	Y
UNC - Chapel Hill	N	Y	Y
U of Wisconsin - Madison	N	N	n/a
Washington and Lee	N	N	n/a
BYU	N	N	n/a
Fordham	N	Y	N
U of Arizona	N	N	n/a
U of Illinois	N	N	n/a
William & Mary	N	Y	login required
U of Washington	N	Y*	N
George Mason	N	N	n/a
U of Colorado	N	Y*	N
U of Utah	N	N	n/a
Baylor	Y*	N	n/a
Florida State University	N	Y	N
Temple	N	N	n/a
Pepperdine	N	N	n/a
SMU	N	Y	login required

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Tulane	N	Y	N
U of Connecticut	N	N	n/a
U of Maryland	N	N	n/a
U of Richmond	N	Y	Y
Yeshiva University	N	Y	login required
U of Nevada	N	Y*	Y
Seton Hall	N	N	n/a
U of Houston	N	Y	N
U of Tennessee	N	Y	N
Loyola Marymount	N	Y	N
U of California - Hastings	N	N	n/a
Northeastern	N	N	n/a
Penn State - University Park	N	Y*	n
U of Missouri	N	N	N
Georgia State	N	Y*	Y
U of Denver	N	Y	Y
U of Kansas	N	N	n/a
U of Miami	N	N	n/a
Brooklyn Law School	N	N	n/a
Case Western Reserve	N	N	n/a
Penn State - Carlisle	N	N	n/a
U of Kentucky	N	Y	login required
U of Oklahoma	N	N	n/a
Villanova	N	Y*	N
American	N	Y	N
Loyola Chicago	N	Y	login required
Rutgers	N	Y	login required
St. John's U	N	N	n/a
U of Nebraska	N	Y	N
U of Pittsburgh	N	Y	N
Texas A&M	N	Y	N

U of Cincinnati	N	N	n/a
U of Oregon	N	N	n/a
U of San Diego	N	N	n/a
Illinois Institute of Tech	N	N	n/a
U of New Hampshire	N	Y	N
U of Tulsa	N	N	n/a
St. Louis U	N	Y	Y
FL International U	N	N	n/a
Marquette	N	Y*	N
Michigan State U	N	Y	N
Syracuse	N	N	n/a
U of Arkansas	N	Y	login required
U of Hawaii	N	Y*	Y
U of New Mexico	N	Y*	N
U of South Carolina	N	Y*	Y
Wayne State	N	N	n/a
Drexel	N	Y	N
Hofstra	N	N	n/a
Louisiana State U	N	Y	Y
WVU	N	N	n/a