

REACTIONS TO THE PERSISTENT GENDER DISPARITY IN STUDENT NOTE PUBLICATION

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INTRODUCTION

Gender disparity remains an unrelenting issue in the legal profession. In *The Persistent Gender Disparity in Student Note Publication*, published in the *Yale Journal of Law and Feminism*, I (along with Nancy Leong) presented original empirical research documenting a significant gender disparity in student note publication.¹ Examination of the notes published during a ten-year time span in the general-interest law reviews at fifty-two schools reveals that women authored approximately 40% of student notes, while men published about 60%.² Our article discussed the range of explanations for the disparity and explored its significance.³ We concluded by offering some preliminary ideas about what can be done to remedy the disparity.⁴

The reactions to our research proved to be nearly as interesting as the research itself. This Article contextualizes these reactions as well as their implications for our original work. Part I summarizes the findings of my

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1. Jennifer C. Mullins & Nancy Leong, *The Persistent Gender Disparity in Student Note Publication*, 23 *YALE J.L. & FEMINISM* 385 (2011).

2. *Id.* at 397-98.

3. *See generally id.* at 385-444.

4. *See id.* at 427-28.

earlier work. Part II presents a collection of reactions to both the collection of the data undergirding these findings as well as the findings themselves. Part III places these reactions within a broader context of the legal community and its approach to gender disparities generally. I conclude that responses to gender disparity appear to be shifting, making the chances for productive change more likely.

I. SUMMARY OF ORIGINAL DATA ON STUDENT NOTE PUBLICATION

In 2009, Nancy Leong and I began a long-term project to test her earlier hypothesis that there was a persistent and significant gender disparity within the publication of student notes in law reviews and journals.⁵ Whereas Nancy's previous work was limited to the top fifteen schools for three years,⁶ our data set consisted of fifty-two schools over ten years.⁷ We collected enrollment data and law review membership data in order to place our student note authorship data within context.⁸ We found that women make up a little less than half of the overall student population in law schools.⁹ We also found that on average women make up closer to 40% of journal membership, a disparity that was more pronounced at different schools.¹⁰ Finally, we found that over the ten-year period, women authored only 40% of all the student notes published.¹¹ This percentage drastically varied between schools but was surprisingly consistent over time.¹²

In addition to collecting numerical data, we surveyed both editors and authors to gain a greater perspective on the note writing and publication process as well as the implications of publication as a student.¹³ We also wanted to determine whether editors or authors believed that there was any disparity in the process.¹⁴ We found that the note writing and publication

5. See Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279, 295 (2009).

6. *Id.* at 280.

7. Mullins & Leong, *supra* note 1, at 391 (compiling data from the top fifty law schools according to the *U.S. News & World Report* in either 2009 or 2010 from the school years 1998-1999 to 2008-2009). As discussed in the original piece, *Harvard Law Review* was not included in this data set because it does not attribute student notes to specific authors. *Id.* at 398 n.46.

8. See *id.* at 392-93.

9. See *id.* at 393.

10. See *id.* at 396-97. Whereas Brigham Young University had the lowest percentage of women on law review (25%), Berkeley had the highest (56%). *Id.*

11. See *id.* at 397-403. At thirteen schools, women authored less than 35% of student notes published. See *id.* at 399.

12. See *id.* at 397-403.

13. See *id.* at 403, 409. We respected the request by some journals to remain anonymous when responding to this survey, but also highlighted the more interesting responses from journals that permitted us to do so. *Id.* at 404.

14. See *id.* at 403, 406, 409, 411.

process varies from school to school, but at the majority of schools who responded, only notes submitted by members of a journal would be considered for publication.¹⁵ We also found that both editors and authors were by and large unaware of any gender disparity.¹⁶ Indeed, quite a few speculated that more women rather than men had been published by their respective journal.¹⁷ Finally, authors overwhelmingly stated how significant their student publication was to their career in private practice as well as academia and on the bench.¹⁸

We presented many potential explanations for the disparity and its persistence, and welcomed additional scholarship on this issue.¹⁹ More importantly, we presented preliminary hypotheses on the implications of the disparity.²⁰ We emphasized the significance that a single "publications" line can make on a resume for candidates applying for a position in a law firm, clerkship, government, or academia.²¹ We concluded by encouraging law review editors, faculty advisors, and women law students to consider their own school's data and work together towards developing constructive solutions to overcome the disparity.²²

II. REACTIONS TO THE GENDER DISPARITY

We received reactions to the data at two main phases of our research: first, when we solicited survey responses from editors and authors, and, second, when we initially made our results public through various online channels.

A. Editor and Author Survey Responses

We did not disclose our findings to editors and authors when we solicited their responses to our online survey about the student note publication process. As a result, these were not reactions in the traditional sense of the word, but rather an unexpected indication of the subconscious feelings towards gender disparity in law school and, more specifically, in note publication.

We received responses from twenty-nine student editors.²³ We asked these editors how they perceived the gender distribution both in note selec-

15. *See id.* at 405.

16. *See id.* at 407, 411-12.

17. *See id.* at 407, 412.

18. *See id.* at 410-11.

19. *See id.* at 414-23, 428.

20. *See id.* at 423-27.

21. *See id.*

22. *See id.* at 427-28.

23. *See id.* at 404.

tion and note publication.²⁴ The majority of editors responded that equal numbers of men and women published notes at their schools.²⁵ This perception was inconsistent with the reality at the majority of these schools.²⁶ Indeed, only the response from the editor from the *Cornell Law Review* reflected a perception that was consistent with our numerical data from that law review.²⁷ This editor felt that more men than women published notes, which was the conclusion found by our research.²⁸

Editors were also asked to comment on whether their law reviews had considered diversity or gender disparity in note publication.²⁹ A few editors, mostly at schools where the disparity was significant, noted that their editorial boards were aware of the issue and had discussed possible remedies.³⁰ However, overall the editor responses reflected a lack of institutional knowledge at law reviews concerning gender disparity in note publication.³¹

Whereas the responses from the editors reflected a disconnect between perception and reality, the response from the authors reflected varying opinions on the study of the disparity in the first place.³² To be sure, many authors did shed light on a given law review's knowledge of the disparity at various points in time.³³ However, these responses merely echo those of the editors.³⁴

More intriguing for our purposes were the responses by authors who were openly hostile to research into the existence of a disparity to begin with. One such author stated that we should not "go looking for gender issues where there are none. There are lots of more important things to do in this world."³⁵ Another stated that such disparity only exists at schools such as Harvard and Columbia.³⁶ This author vehemently denied that such dispar-

24. *See id.* at 406-07.

25. *See id.* at 407.

26. *See id.* at 398-400.

27. *Id.* at 408.

28. *Id.*

29. *Id.*

30. *See id.*

31. Additional surveys concerning the gender disparity in law review membership may reveal a similar lack of awareness. From personal experience, I recognize that student editors are often overwhelmed with the task of publishing a number of issues in a given year. It is not until a school administration or other outside entity raises concerns about membership demographics that a given editorial board is forced to confront the issue. I welcome and encourage additional research on this issue.

32. *See Mullins & Leong, supra* note 1, at 411-12.

33. *See id.* at 412-13.

34. *See id.* at 412. Like the majority of editors, the majority of authors believed that an equal number of men and women were published as students on their respective law reviews. *Id.*

35. *Id.* at 413-14 (quoting one respondent of the author survey).

36. *See id.* at 414.

ity had existed at its school over the past decade, although our data found that his school had a disparity comparable to either of those schools.³⁷

In summary, merely asking whether a given editor or author perceived gender disparity provided more information than expected. The perception of current student editors was disconnected from reality—that a gender disparity does in fact exist. Meanwhile, many authors questioned the usefulness and need of our study in the first place. These reactions, compiled prior to the completion of our research, suggested that our research was not only significant but also that the responses to our actual data would be significant as well.

B. Reactions to the Completed Work

Upon completion of our research, but prior to publication in the *Yale Journal of Law and Feminism*, we made our initial findings available on SSRN.³⁸ Within one week, the draft article had been downloaded over one hundred times. We also publicized our initial findings on various “blawgs.”³⁹ Gender legal scholars welcomed the study as empirical proof of gender disparity that they always thought existed in the legal profession but could never prove. We also received a number of unsolicited emails from individuals around the country conducting similar work on gender disparity in law review membership and other aspects of law school. Current journal editors inquired about the data for their own law reviews, many admitting that their publications had never considered whether a gender disparity existed prior to our article.

I presented our research at two conferences in 2012: Capital Area Legal Writing Conference⁴⁰ and *Michigan State Law Review’s* Symposium, Gender and the Legal Profession’s Pipeline to Power. I was particularly interested in presenting the work to legal writing professors because of my own experiences during my first year of teaching legal writing to first year law students. I had observed that my female students were more likely to conduct far more thorough analyses than their male cohorts but were hesitant to assert a strong conclusion.⁴¹ This is consistent with studies finding

37. See *id.*

38. See Nancy Leong & Jennifer Mullins, *The Persistent Gender Disparity in Student Note Publication* (Univ. Denver Legal Studies Research, Paper No. 11-24), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1781149 (displaying the date posted as March 12, 2011).

39. See, e.g., Nancy Leong, *Ten Years of Student Notes*, FEMINIST L. PROFESSORS (Mar. 8, 2011), <http://www.feministlawprofessors.com/2011/03/ten-years-of-student-notes/>.

40. See *Georgetown Law CLE*, GEO. L., <http://www.law.georgetown.edu/cle/showeventdetail.cfm?id=273> (last visited Sept. 17, 2012).

41. Although this is merely anecdotal evidence, this trend warrants further study.

that women are less likely to assert themselves in the workplace.⁴² This may indicate that women's writing in law school is a reflection of the emotional state of women in law school. Perhaps then overcoming gender disparity requires a gendered approach to legal writing education as well. The comments I received at the legal writing conference informed this hypothesis. Participants at the conference were quick to conclude that the trends in our study were due to factors including women's ability to write and women's likelihood to be caretakers for children. They did not consider whether the issue was how women were taught rather than inherent ability. This echoed the lack of institutional knowledge or even consideration of gender disparity found in our author and editor surveys.

Finally, I presented our work at the *Michigan State Law Review* Pipeline to Power Symposium, where the research was very well received and overlapped substantially with the work of scholars like Dara Purvis and Abigail Rury to create an overall picture of gender disparity in law school. Professor Purvis's insight into the practices of the *Yale Law Journal* was especially interesting. She noted that notes and comments not initially selected for publication are returned to the law review member to edit for re-submission.⁴³ However, men are more likely to resubmit.⁴⁴ Again, this suggested that women are less likely to take initiative in the law school environment and that this has significant implications for their success in law school and beyond.

III. SIGNIFICANCE OF THE REACTIONS

Two main conclusions can be drawn from these reactions. First, the lack of institutional knowledge or concern about gender disparity in student note publication likely contributed to the persistence in the disparity over time. The author surveys indicate that during the ten-year period we examined, law reviews were either unaware or unconcerned with gender disparity. The lack of institutional knowledge is to be expected because students cycle through law reviews every two years. Unless an issue is brought to the law review's attention, it is unlikely that they will develop an interest in investigating disparity over time. Similarly, the reactions of faculty to our research indicates that faculty advisors—who are in a better position to promote institutional knowledge within a law review—are not likely to encourage students to investigate the disparity unless they either have a specif-

42. See Patricia Gillette, *Lack of Self-Promotion Hurts Women in Large Firms*, AM L. DAILY (July 7, 2009, 1:09 PM), <http://amlawdaily.typepad.com/amlawdaily/2009/07/self-promotion.html>.

43. Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, 2012 MICH. ST. L. REV. 1693, 1700.

44. *Id.*

ic interest in the issue or observe the disparity themselves. This reinforces our original suggestion that faculty and students start a dialogue at their own institutions to evaluate gender disparity.

More disturbing is the fact that there is a population of law review members that did not believe that the disparity is worth investigating. When law students, professors, or practicing attorneys approach gender disparity in denial of its very existence, it is no wonder that the disparity persists. Disparity cannot be overcome when the very actors needed to overcome it refuse to be honest with themselves about whether the disparity exists in the first place. Ignorance about gender disparity is not unique to law review members. Indeed, the idea that women simply need to “make it work” or “suck it up” in order to succeed in the legal profession has long been seen as a deterrent to overcoming gender disparity.⁴⁵

However, the second conclusion that can be drawn from these reactions provides some relief from these bleak conclusions. There is an increased interest in and recognition of the existence of gender disparity. Not only is gender disparity an increasing area of interest in legal academia as evidenced by the work of all the participants at the Symposium, women’s issues have also taken center stage nationwide. “Feminism” is less of a dirty word,⁴⁶ and implicit gender bias is less likely to influence the actions of the newer generations of lawyers.⁴⁷ Certainly there is still bias and disparity to investigate and overcome.⁴⁸ But the newfound momentum in researching and discussing gender disparity is encouraging.

CONCLUSION

The reactions to our research on gender disparity in student note publication reinforce the significance of our research by highlighting the attitudes that contributed to the longevity of the disparity, but also indicate that our research is part of a larger movement to understand and overcome gen-

45. See generally Paula Gaber, “Just Trying to Be Human in This Place”: *The Legal Education of Twenty Women*, 10 YALE J.L. & FEMINISM 165 (1998).

46. See Rebecca Traister, *How the “War on Women” Quashed Feminist Stereotypes*, WASH. POST, May 11, 2012, http://www.washingtonpost.com/opinions/one-good-casualty-in-the-war-on-women-the-stereotype-of-joyless-feminists/2012/05/11/gIQAcMyKIU_story.html.

47. See generally Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL’Y 1 (2010).

48. See, e.g., Lauren Stiller Rikleen, *Are Women Held Back by Colleagues’ Wives?*, HBR BLOG NETWORK (May 16, 2012, 11:33 AM), http://blogs.hbr.org/cs/2012/05/are_workign_women_held_back_by.html (finding that men with wives that stay at home are more likely to impose gender stereotypes on female co-workers); Katherine Mangan, *Law Students, Particularly Women, Have Limited Contact with Faculty, Survey Finds*, CHRON. HIGHER EDUC. (Jan. 5, 2011), <http://chronicle.com/article/Law-Students-Particularly/125800/> (finding that women are less likely to reach out to professors in law school).

der disparity in the legal profession. Reactions to our work have stimulated the dialogue that we encouraged in our original piece—not just about gender disparity in student publication, but also in legal education and the legal profession generally. As one commenter on the *Feminist Law Professors* blog wrote, “[I]f we’re going to fix [gender disparity], we have to fix all of it—not just the most obvious outcomes.”⁴⁹ As long as dialogue continues, gender disparity in the legal profession will continue to be understood and eventually become a thing of the past.

49. Fontgoddess, Comment to *Ten Years of Student Notes*, FEMINIST L. PROFESSORS (Mar. 19, 2011, 12:43 PM), <http://www.feministlawprofessors.com/2011/03/ten-years-of-student-notes/>.