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# The Law Review Divide: A Study of Gender Diversity on the Top Twenty Law Reviews

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## NOTE

### **The Law Review Divide: A Study of Gender Diversity on the Top Twenty Law Reviews**

Lynne N. Kolodinsky

#### INTRODUCTION

A highlight of the summer following my first year at Cornell Law School was receiving an invitation to become an associate member of the *Cornell Law Review*. I was thrilled and honored to accept this invitation, which symbolized the pinnacle of first-year law school success and quite literally opened doors to interview rooms at the annual Cornell job fair that August.

Not long after distributing invitations, the *Cornell Law Review* released a complete list of the new associates for the upcoming 2012–13 academic year, and I noticed immediately that only fourteen of the forty-two new associates were women. I was not alone in observing this—within minutes of the list being published, a friend and fellow law review member contacted me to ask whether I would, as president of my school’s women’s affinity group at that time, issue a public written statement decrying this apparent underrepresentation of women on the law review.<sup>1</sup> Although I shared my friend’s surprise, I did not feel I had anything to decry because the law review’s admissions process seemed fair and transparent. To my knowledge, exams were graded anonymously and writing competitions were scored blindly, and the resultant grade-point averages and writing scores were then paired and ranked by an impartial administrative assistant. I perceived no inherent unfairness in the process; instead, it appeared to me that women in my class had—for unknown reasons—simply not fared as well as men in the *Cornell Law Review* admissions process.

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<sup>1</sup> My conclusion that fourteen out of forty-two signaled underrepresentation was based on an assumption that women comprised more than half of the applicant pool. For an in-depth discussion of women’s law school enrollment rates and possible problems with using these rates in statistical analysis, see *infra* discussion Part II.B.

It was not long before I learned that this apparent and unexplained gender disparity in law review membership is not unique to Cornell Law School.<sup>2</sup> I describe the disparity as both apparent and unexplained because although a number of scholarly articles and essays mention this disparity or analyze some segment of it, no scholarship yet provides a thorough examination and analysis of how law review admissions processes affect the gender diversity of law review membership, if in fact they affect gender diversity at all. The uncertain effect of the law review admissions process on law review gender diversity led me to reflect more deeply on my friend's goading remark and wonder whether there might be something in the process to decry.

My goal in this Note is to objectively analyze the gender disparity on law reviews and begin exploring possible explanations for that disparity. In pursuit of this goal, I present independently reported and verified data on law review membership at the top-twenty ranked law reviews over the past five academic years (2008–09 through 2012–13), run a comprehensive statistical analysis of that data, and discuss my findings from this statistical analysis. Finally, I aim to begin a discussion of possible explanations for these findings by situating my study within the realm of existing scholarship on women in the law.

I understand the tension often inherent in diversity issues and, more importantly, I understand that law reviews value and treat diversity in different ways. For these reasons, I do not purport to draw any normative conclusions in this Note. Furthermore, I do not write this Note through the lens of any particular theory of feminist discourse;<sup>3</sup> to the contrary, I have

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<sup>2</sup> Jennifer C. Mullins & Nancy Leong, *The Persistent Gender Disparity in Student Note Publication*, 23 *YALE J.L. & FEMINISM* 385, 397 (2011).

<sup>3</sup> Much of the scholarship on women in the law, like much of feminist scholarship in general, may be classified under the headings of two main theories: the “equality” theory and the “difference” theory. The equality theory, propelled forward by feminists as early as Mary Wollstonecraft in 1792, *see* MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMEN*, Chap. IX (Boston: Peter Edes 1792), emphasizes the similarities between women and

taken care to collect and analyze my data as objectively as possible because my goal is to promote an advanced understanding of law review membership rather than any particular feminist agenda.<sup>4</sup> I hope simply that my work will contribute to the ongoing inquiry into law review gender diversity by enhancing a collective understanding of the relationship between a law review's admissions process and its gender diversity. This, in turn, will ideally assist all law reviews in deciding how to achieve their ideal diversity balances, regardless of what those balances might be.

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men as grounds on which to base equal treatment and respect of the sexes. Fundamentally at odds with the equality theory is the difference theory, a more recently developed feminist movement that stresses the differences between women and argues that "discrimination and different patterns of gender socialization are relevant to considerations of women's employment and education." STEVEN SEIDMAN, *THE POSTMODERN TURN: NEW PERSPECTIVES ON SOCIAL THEORY* 19 (1994).

Viewing women's experiences in law school too exclusively through either an equality lens or a difference lens may be disadvantageous to women's advancement. On one end, sheer equal treatment of women and men in the law school classroom may be an insufficient response to women's discontent, either because it makes "man . . . the measure of all things," Catharine A. MacKinnon, *Difference and Dominance: On Sex Discrimination*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 32 (1987), or because an "equal" experience may be undesirable in other ways by both women and men alike, *see, e.g.*, Banu Ramachandran, *Re-Reading Difference: Feminist Critiques Of The Law School Classroom And The Problem With Speaking From Experience*, 98 *COLUM. L. REV.* 1757, 1774 (Nov. 1998) (citations omitted) ("For instance, Kingsfield, the much-feared contracts professor in *The Paper Chase*, might have treated all his students equally, but few would find the manner in which he treated students to be desirable."). On the other hand, difference theory "tends to obscure differences among women, and perhaps, ultimately, tends to reproduce the exclusions of the larger society." Ramachandran, *supra*.

<sup>4</sup> My approach aligns most closely with gender historian Joan Scott's focus on the critical importance of understanding institutions in order to best understand what change is needed, if any, and how best to effectuate that change:

The emphasis on "how" suggests a study of processes, not of origins, of multiple rather than single causes, of rhetoric or discourse rather than ideology or consciousness. It does not abandon attention to structures or institutions, but it does insist that we need to understand what these organizations mean in order to understand how they work.

JOAN W. SCOTT, *GENDER AND THE POLITICS OF HISTORY* 63 (Columbia University Press rev. ed. 1999)

Part I provides background information on women in law schools, including a brief history of women in the legal profession, women's experiences in law school today, and a sketch of current legal scholarship on women's issues in legal education. This history is an integral part of any possible explanation for why women's law school experiences might differ from men's because the traditionally male-dominated nature of legal education and culture will doubtless continue to have a lingering impact on women in the profession. Furthermore, a broad understanding of women's law school experiences contributes to an understanding of narrower pieces of those experiences, including law review membership. This Part then situates my Note within the developing realm of legal scholarship on women in law not as advocacy of any particular theory, but rather as a means of understanding *how* certain processes, including law review selection, contribute to women's contemporary law school experiences.<sup>5</sup>

Part II describes my method of data collection and analysis. This Part begins with a brief overview of my methodology. I also provide the rationale for the scope of my study, which covers the past five years' membership of the top twenty law reviews in the Washington & Lee University Law Library Law Review Rankings. I describe in turn each of my four major data sources—(1) masthead collection, (2) school enrollment data, (3) publicly available information on law reviews' admissions processes, and (4) solicited qualitative data from editors-in-chief of law reviews—and my approach to compiling data from these sources.

Part III describes my data and factual findings. I begin by presenting my general finding that over the past five years across all twenty schools in my study, women are statistically underrepresented members of law reviews. Critically, this gender disparity does not exist at each of the twenty schools, and the severity of the disparity varies quite widely among the schools at

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<sup>5</sup> *See id.*

which it does exist. I explore these differences by running a two-sample t-test on each school. The results of these tests show that although the gender disparity in law review membership is sufficiently pervasive to create an overall gender disparity across the top twenty law reviews, the gender disparity is not by any means universal.

Part IV is a discussion of my data, including possible explanations for the gender disparity where it exists and the importance of my study in the greater scheme of women's participation in law schools and the legal profession. I focus my discussion on the non-universality of the disparity to support my theory that despite a woman's ability to succeed in law school and on law review to the same extent as a man, women are affirmatively self-selecting out of the process and choosing to prioritize other parts of their lives.

Part V is a Conclusion that summarizes the significance of my Note and shares ideas for future studies on this topic.

## I. BACKGROUND

### A. A Brief Overview of Women's Advancement in the Legal Profession

For many years, the idea that a woman might practice law was unthinkable. Women remained "civilly dead and without political rights" for years after the American Revolution,<sup>6</sup> and Thomas Jefferson wrote during his presidential tenure that women's education should be limited to "the amusements of life . . . dancing, drawing, and music."<sup>7</sup> Half a century later, Justice Bradley echoed these sentiments in *Bradwell v. Illinois*, the landmark Supreme Court case that upheld Illinois' right to deny a woman admission to the state bar on the basis of her sex,

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<sup>6</sup> BETTINA AP THEKER, *WOMEN'S LEGACY: ESSAYS ON RACE, SEX, AND CLASS IN AMERICAN HISTORY* 16 (University of Massachusetts Press 1982).

<sup>7</sup> Letter from Thomas Jefferson to Nathaniel Burwell (Mar. 14, 1818), *in* 12 *THE WORKS OF THOMAS JEFFERSON, 1816–1826* (New York and London, G.P. Putnam's Sons, Fed. Ed. 1905), available at [http://oll.libertyfund.org/?option=com\\_staticxt&staticfile=show.php%3Ftitle=808&chapter=88372&layout=html&Itemid=27](http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=808&chapter=88372&layout=html&Itemid=27).

stating that “[t]he paramount destiny and mission of woman are to fulfil [*sic*] the noble and benign offices of wife and mother.”<sup>8</sup> Although several government-supported universities began to offer women admission after the Civil War, women remained unable to practice law without a court-granted license until Arabella Babb Mansfield became the first woman in the nation to win bar admission in June 1869.<sup>9</sup> After Mansfield’s bar admission, Myra Bradwell earned her legendary reputation as “the pioneer woman lawyer” by working to further women’s ability to gain law school and state bar admission at the end of the nineteenth century.<sup>10</sup>

Despite this early progress, women applying to law schools faced tremendous resistance and ridicule until only recently.<sup>11</sup> Even after Congress approved women’s suffrage in June 1919, twenty-seven law schools—including several of the nation’s most elite law schools<sup>12</sup>—continued to refuse women admission. At the same time, women long continued to self-select out of law school in order to avoid the additional and greater challenge of securing legal employment after graduation. Ruth Bader Ginsburg, the second woman to ever be appointed a United States Supreme Court Justice and one of only nine women in Harvard Law School’s 1956 entering class of 500, articulated the struggle in the following manner: “Why were there so few women in

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<sup>8</sup> 83 U.S. 130, 141 (1872) (Bradley, J., concurring).

<sup>9</sup> See HEDDA GARZA, *BARRED FROM THE BAR: A HISTORY OF WOMEN AND THE LEGAL PROFESSION* (1996), available at <http://www.naderlibrary.com/lit.barredbar.1.htm>. Mansfield won her bar admission in Iowa state. See *id.*

<sup>10</sup> See *id.*; see also Barbara Allen Babcock, *Clara Shortridge Folst: First Woman*, 28 VAL. U. L. REV. 1231, 1266 & n.155 (1994) (describing Bradwell as the “most celebrated of early women lawyers” and highlighting several of Bradwell’s significant accomplishments).

<sup>11</sup> See GARZA, *supra* note 9.

<sup>12</sup> See *id.* Among the elite law schools, Yale Law School first admitted one woman in 1918 and five more in 1919, but Columbia Law School and Harvard Law School remained resistant for a number of additional years.

law school a generation ago? It was the sense that, well, I can go through three years of law school and then what? Who will hire me and how will I support myself?”<sup>13</sup>

It was not until 1970 that women’s enrollment in J.D. programs at American Bar Association accredited schools reached 10%, and it was not until 1985 that thirty percent of J.D. candidates nationally were women.<sup>14</sup> In 1994, this figure peaked at 50.4%, and since then, it has hovered between 43% and 49%.<sup>15</sup>

### B. Women in Law Schools Today

The American Bar Association (“ABA”) reports that in the 2011–2012 academic year, women comprised 46.7% of the total J.D. enrollment at ABA-accredited law schools nationwide.<sup>16</sup> While this number indicates a significant increase in women’s J.D. enrollment over the past thirty years, it also illustrates a relatively steady decline in women’s J.D. enrollment from 2002 to the present.<sup>17</sup> The importance of this trend is its impact on the legal profession as a whole: quite simply, fewer women in law school means fewer women lawyers.<sup>18</sup>

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<sup>13</sup> See Lynn Gilbert & Gaylen Moore, *Particular Passions: Talks With Women Who Have Shaped Our Times* 167–69 (Clarkson Potter ed. 1988).

<sup>14</sup> See AMERICAN BAR ASSOCIATION, *FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER 1947–2011* 1–2 (2011) [hereinafter ABA ENROLLMENT].

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> Women comprised 49% of J.D. enrollment at ABA-accredited schools in 2002–2003 and 2003–2004, and they have not comprised that much of the total J.D. enrollment since those years. See *id.*; see also Vivia Chen, *Women Spurn Law Schools*, THE CAREERIST, May 16, 2011, available at <http://thecareerist.typepad.com/thecareerist/2011/05/fewer-women-at-nations-law-schools.html> (noting that women’s law school enrollment has steadily declined since 2002 and offering potential explanations for this trend).

<sup>18</sup> See Debra Cassens Weiss, *Have Women’s Law School Numbers Peaked? NAWL Report Suggests The Pipeline May Be Shrinking*, AMERICAN BAR ASSOCIATION JOURNAL (Nov. 10, 2011), [http://www.abajournal.com/news/article/have\\_womens\\_law\\_school\\_numbers\\_peaked\\_nawl\\_report\\_suggests\\_the\\_pipeline\\_is\\_/](http://www.abajournal.com/news/article/have_womens_law_school_numbers_peaked_nawl_report_suggests_the_pipeline_is_/); see also Press Release, National Association of Women Lawyers, National Association of Women Lawyers Releases Sixth Annual Survey (Nov. 10, 2011), available at <http://nawl.timberlakepublishing.com/files/2011>



The most salient explanation for the currently declining women’s J.D. enrollment figures may be exactly the sentiment expressed by Ruth Bader Ginsburg regarding her law school experience in the early 1950s.<sup>19</sup> The main difference made by the past fifty years, however, is that women can now look to extensive collections of numerical data to support their conclusion that they are less likely than their male counterparts to advance in the legal profession.<sup>20</sup> Indeed, the former president of the National Association of Women Lawyers summarized this feeling in the following manner: “Twenty years ago, when you had a lot of women coming out of law school, the ceiling was not as apparent as it is now. You didn’t have as many statistics or information.”<sup>21</sup> Jessie Kornberg, executive director of the Ms. JD organization, agrees that women are well aware of and discouraged by the fact that there has been “no discernible progress for women in the legal profession in roughly a decade.”<sup>22</sup>

Women’s lack of success in the legal profession arguably begins in law school or even earlier. In November 1994, Lani Guinier and four co-authors became the first to extensively

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%20Sixth%20Annual%20NAWL%20Survey%20Press%20Release%20vF%281%29.pdf (“Not only do women represent a decreasing percentage of lawyers in big firms, they are more likely to occupy positions—like staff attorneys, counsel, and fixed-income equity partners—with diminished opportunity for advancement or participation in firm leadership.”).

<sup>19</sup> See *supra* text accompanying note 13.

<sup>20</sup> See, e.g., CATALYST, WOMEN IN LAW IN THE U.S. (Jul. 2012) [hereinafter CATALYST SURVEY] (presenting data to illustrate the “drastic difference between women and men at the highest levels in law firms” and showing numerically that women are underrepresented in nearly every area of the legal profession, including academia and general counsel positions), THE NATIONAL ASSOCIATION OF WOMEN LAWYERS AND THE NAWL FOUNDATION, REPORT OF THE SIXTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS (Oct. 2011) [hereinafter NAWL SURVEY] (analyzing data to show, among other things, that women in the legal profession are promoted at lower rates than men, compensated at lower levels than men, and elevated to positions of leadership less often than men), ABA COMMISSION ON WOMEN IN THE PROFESSION, CURRENT GLANCE OF WOMEN IN THE LAW (Jan. 2011) (using charts and graphs to illustrate women’s underrepresentation in various aspects of the legal profession).

<sup>21</sup> See Chen, *supra* note 17.

<sup>22</sup> See *id.*

study and write about the gender gap in law school performance.<sup>23</sup> After conducting a comprehensive empirical study of students enrolled at the University of Pennsylvania Law School between 1987 and 1992, Guinier and her co-authors concluded that “men outperform women at the University of Pennsylvania Law School.”<sup>24</sup> Much to the surprise of many law school deans and administrators,<sup>25</sup> this study revealed that by the end of the first year of law school, men were three times more likely than women to be in the top 10% of their law school class.<sup>26</sup> Guinier’s article suggested that this severe performance gap was caused by the systematic alienation of women in the law school setting.<sup>27</sup> More importantly, Guinier challenged contemporary women to demonstrate that mere access to law schools alone is inadequate.<sup>28</sup> Ultimately, Guinier and her co-authors recommended that a spirit of “genuine inclusion” in both the legal educational and professional spheres calls for school to do more than simply “add women and stir.”<sup>29</sup>

Women’s conspicuous lack of success in law school and the legal profession presents a “chicken and egg” problem in that it is unclear which is the cause giving rise to the counterpart effect. Since Guinier’s article was published nearly twenty years ago, numerous other scholars have attempted to focus on narrower aspects of women’s law school experiences to help explain

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<sup>23</sup> See Lani Guinier, et al., *Becoming Gentlemen: Women’s Experiences At One Ivy League Law School*, 143 U. PA. L. REV. 1, 1–2 (1994).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> See Laura Mansnerus, *Men Found to Do Better in Law School Than Women*, N.Y. TIMES (Feb. 10, 1995), <http://www.nytimes.com/1995/02/10/us/men-found-to-do-better-in-law-school-than-women.html> (describing law schools administrators’ reaction as “perplexed” and “pretty startled”).

<sup>26</sup> See Guinier, et al., *supra* note 23, at 5. These findings were reinforced by a much larger study of over 6,000 students at law schools across the country that yielded similar results. See Mansnerus, *supra* note 25.

<sup>27</sup> See Guinier, et al., *supra* note 23, at 5.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

why women are underperforming men within both the sphere of legal education sphere and the legal profession more broadly.<sup>30</sup>

### C. The Development of Scholarship on Women in Law

As soon as significant numbers of women began attending law school, scholars and commentators began to devote an increasing amount of attention to the topic of women in law. The first legal publication to focus on women's issues in the law was the *Women's Rights Law Reporter*, first published by Rutgers Law School in 1971 and advised by then-Professor Ruth Bader Ginsburg.<sup>31</sup> Since then, over two dozen new journals have been devoted to gender, race, ethnicity, and sexual orientation issues in the legal education world.<sup>32</sup>

Despite this attention, however, it remains uncertain why exactly women seem to experience law school so differently than men. Early studies of women and the law focused on relatively narrow questions about women's initial entry and adaptation into the legal profession.<sup>33</sup> Later, and largely overlapping with the Critical Legal Studies ("CLS") movement,<sup>34</sup> studies of women and the law became heavily influenced by feminist legal theory.<sup>35</sup> Especially notable among these works of feminist legal theory is the work of Carol Gilligan, who

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<sup>30</sup> See *infra* notes 49–52 and accompanying text.

<sup>31</sup> See Elizabeth Langer, *The Birth of the Women's Rights Law Reporter*, BARNARD COLLEGE NEWS (Nov. 30, 2010), <http://barnard.edu/headlines/birth-womens-rights-law-reporter>.

<sup>32</sup> See Judith Resnik, *A Continuous Body: Ongoing Conversations About Women And Legal Education*, p. 567 & n. 13 (Yale Law School Legal Scholarship Repository Faculty Scholarship Series, Paper 763, Jan. 1, 2003), available at [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1762&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1762&context=fss_papers).

<sup>33</sup> See, e.g., David M. White & Terry E. Roth, *The Law School Admission Test and the Continuing Minority Status of Women in Law Schools*, 2 HARV. WOMEN'S L.J. 103, 103 (1979) (focusing on the effects on women resulting from law schools' increased reliance on the LSAT); Alice D. Jacobs, *Women in Law School: Structural Constraint and Personal Choice in the Formation of Professional Identity*, 24 J. LEGAL EDUC. 462, 467-68 (1972) (discussing the effects of gender stereotyping on women's legal education).

<sup>34</sup> See Ramachandran, *supra* note 3, at 1765.

<sup>35</sup> See Guinier, et al., *supra* note 23, at 100.

studied the difference between men's and women's moral reasoning,<sup>36</sup> the work of Carrie Menkel-Meadow, who argued that the early exclusion of women from legal professional and educational institutions produced institutions very different from what would have resulted with women's involvement,<sup>37</sup> and the work of Mari Matsuda, who theorized that members of oppressed groups, including women in the law school setting, possess a "multiple consciousness" which includes both mainstream American consciousness and the outsider's consciousness."<sup>38</sup>

#### D. Contemporary Scholarship on Women in Law

In the late 1980s, empirical studies of women's experiences at Yale Law School<sup>39</sup> and the University of California Berkeley School of Law<sup>40</sup> (Boalt Hall) built upon Carol Gilligan's and Mari Matsuda's critical findings to conclude that women experience law school differently than men and that law schools should hire more female faculty members to make women students' experiences more positive.<sup>41</sup> Lani Guinier's article, in turn, further contributed to these early studies by providing the "first [study] that attempts to weave a full analysis out of self-reported survey data, actual academic performance data, and open-ended narrative responses."<sup>42</sup> In addition to arguing that women law students are less successful than their male counterparts due

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<sup>36</sup> See CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

<sup>37</sup> See Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 41-42 (1985).

<sup>38</sup> Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 7 (1989)

<sup>39</sup> See Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299 (1988).

<sup>40</sup> See Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take An Inside Look At Law School*, 5 BERKELEY WOMEN'S L.J. 1 (1989).

<sup>41</sup> See Weiss & Melling, *supra* note 39, at 1356-57; Homer & Schwartz, *supra* note 40, at 29.

<sup>42</sup> See Guinier, et al., *supra* note 23, at 100.

to feelings of systematic alienation, Guinier's article argued that law schools create and legitimate "larger sets of social stratifications" in the legal profession.<sup>43</sup>

Guinier's article, which she later expanded into a book,<sup>44</sup> became a launching pad for multitudinous modern legal scholarship on women and the law.<sup>45</sup> This scholarship has built upon Guinier's path-breaking article in a wide variety of ways, from advocating the creation of all-women's law schools<sup>46</sup> to re-evaluating the effectiveness of traditional law school teaching methods<sup>47</sup> to calling for an expanded understanding of Guinier's work that goes beyond its underpinnings in feminist "difference" theory.<sup>48</sup> Despite their vast differences, however,

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<sup>43</sup> See Guinier, et al., *supra* note 23, at 100.

<sup>44</sup> See LANI GUINIER, ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997).

<sup>45</sup> A number of these scholarly pieces directly cite Guinier's article as their inspiration. See, e.g., Eli Wald et al., *Looking Beyond Gender: Women's Experiences At Law School*, 48 TULSA L. REV. 27, n.1 (Summer 2012) ("[W]e wish not only to acknowledge and build on Guinier's path-breaking work, but also to somewhat deviate from it. . . ."); Sarah E. Thiemann, *Beyond Guinier: A Critique Of Legal Pedagogy*, 24 N.Y.U. REV. L. & SOC. CHANGE 17, 18 (1998) ("This piece will consider Guinier's recommendations and add some additional suggestions.").

<sup>46</sup> See, e.g., Jennifer Gerarda Brown, "To Give Them Countenance": *The Case For A Women's Law School*, 22 HARV. WOMEN'S L.J. 1, 2 (Spring 1999) (advocating "a single-sex law school designed and run exclusively for women students").

<sup>47</sup> See, e.g., Polly Beth Proctor, *Toward Mythos and Mythology: Applying A Feminist Critique To Legal Education To Effectuate A Socialization Of Both Sexes In Law School Classrooms*, 10 CARDOZO WOMEN'S L.J. 577, 577-78 (Summer 2004) (arguing that "the structure and methodology behind legal education. . .not only creates an intimidating environment that does not as effectively engage women's initiative or problem-solving abilities, but. . .also fails to promote the most effective lawyering for either sex."); cf. Elizabeth Garrett, *Becoming Lawyers*, 1 GREEN BAG 2D 199 (Winter 1998) (defending the Socratic method as effective pedagogy in response to Guinier's "indictment" of it).

<sup>48</sup> See, e.g., Eli Wald et al., *supra* note 45, at n.1 (Summer 2012) ("While becoming lawyers still entails becoming gentlemen, it also meaningfully involves developing and pursuing racial, ethnic, cultural, socioeconomic, and familial aspects of one's identity."); see also Ramachandran, *supra* note 3, at 1759 (promoting poststructuralist feminist theory as means of closing the "gaps" in Guinier's and other early studies and as an effective avenue for advancing change in legal education).

virtually all of these pieces share in common a desire to better understand women's contemporary law school experiences.

In pursuit of this understanding, a significant portion of modern scholarship comprises studies that focus on relatively narrow aspects of women's law school experiences. Notable conclusions drawn by these studies include the observations that women are less successful than men in law school moot court competitions,<sup>49</sup> women faculty and students publish legal scholarship at significantly lower rates than men,<sup>50</sup> and women are underrepresented on their schools' law reviews.<sup>51</sup> Additionally, a number of professional organizations, including the American Bar Association,<sup>52</sup> the National Association of Women Lawyers,<sup>53</sup> Catalyst,<sup>54</sup> New York Law School,<sup>55</sup> and Ms. JD,<sup>56</sup> have undertaken empirical studies and statistical analysis to contribute to the growing field of knowledge on this topic. The issue of women in the law has become a hot topic even for popular magazines and blogs, including *The American Prospect*<sup>57</sup>

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<sup>49</sup> See Mairi N. Morrison, *May It Please Whose Court?: How Moot Court Perpetuates Gender Bias In The "Real World" Of Practice*, 6 UCLA WOMEN'S L.J. 49, 50 (Fall 1995).

<sup>50</sup> See Minna J. Kotkin, *Of Authorship And Audacity: An Empirical Study Of Gender Disparity And Privilege In The "Top Ten" Law Reviews*, 31 WOMEN'S RIGHTS L. REP. 385, 386 (Summer 2010) (analyzing the gender disparity in faculty publication rates on the top ten law reviews); Nancy Leong, *A Noteworthy Absence*, 59 J. LEGAL EDUC. 279 (2009) (focusing on gender disparity in publication rates of student Notes and arguing that this disparity is primarily the result of women students' alienation from law reviews).

<sup>51</sup> See Allison L. Bowers, *Women at the University of Texas School of Law: A Call For Action*, 9 TEX. J. WOMEN & L. 117 (2000) (discussing women's underrepresentation on the University of Texas Law Review and suggesting that this is a result of "a systematic devaluation of women's writing").

<sup>52</sup> See ABA COMMISSION ON WOMEN IN THE PROFESSION, *supra* note 20.

<sup>53</sup> See NAWL SURVEY, *supra* note 20.

<sup>54</sup> See CATALYST SURVEY, *supra* note 20.

<sup>55</sup> See THE NEW YORK LAW SCHOOL LAW REVIEW, LAW REVIEW DIVERSITY REPORT (Oct. 2012).

<sup>56</sup> See MS. JD, WOMEN ON LAW REVIEW: A GENDER DIVERSITY REPORT (2009); MS. JD, WOMEN ON LAW REVIEW: A GENDER DIVERSITY REPORT (2011).

<sup>57</sup> See Pema Levy, *Law Schools' Women Problem*, THE AMERICAN PROSPECT (May 19, 2011), available at <http://prospect.org/article/law-schools-women-problem>.

and the legal blog *Above The Law*, which chimed in on the results of the latest Ms. JD study by commenting that law reviews across the nation are becoming “something of a good old boys’ club”<sup>58</sup> and urging law reviews to “do better in terms of reaching a greater gender equality among their top brass.”<sup>59</sup>

## II. METHODOLOGY

### A. Overview and Scope

Recent studies investigating women’s law review membership have tended to rely on self-reporting. The most recently released study of law review membership, for example, relied on self-reported responses from “law school students, law review support staff, and recent law school alumni,” some of whom had previous connections to Ms. JD, to anonymously compile data from thirty-five of the top fifty law reviews.<sup>60</sup> Furthermore, although recent studies have published comprehensive sets of data, none has yet performed statistical analysis on that data.<sup>61</sup> My goal in my data collection and analysis, therefore, was to perform the first thorough yet readily comprehensible statistical analysis of law review gender diversity data collected from independently reported and verified sources.

To keep my study narrow enough to be manageable yet wide enough to be valuable, I limited my study to the past five years’ membership on the law reviews ranked within the top twenty by the Washington & Lee University Law Library. I chose these law reviews because they are reputed to be leaders and models for hundreds of assorted legal journals all across the nation. Notably, the list of Washington & Lee University Law Library top twenty law reviews is

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<sup>58</sup> Staci Zaretsky, *The Lovely Ladies Of Law Review: Where Are The EICs?* ABOVE THE LAW BLOG (Oct. 19, 2012, 11:55 a.m.) available at <http://abovethelaw.com/2012/10/the-lovely-ladies-of-law-review-where-are-the-eics/>.

<sup>59</sup> *Id.*

<sup>60</sup> See Ms. JD (2011), *supra* note 56, at 1.

<sup>61</sup> See Mullins & Leong, *supra* note 2, at 387 & n.11.

not identical to the *U.S. News & World Report* list of top twenty law schools, though the two lists share a high degree of overlap.<sup>62</sup>

I limited my study to each school's flagship, general-interest law review largely to promote clarity and consistency; although the schools in my study have widely varying numbers and types of legal journals, their general-interest law reviews all share in common no limitations on subject-matter and recognition as the school's most prestigious journal. Moreover, I limited my study to flagship law reviews to reduce the complexity of my statistical analysis by removing consideration of non-independent events<sup>63</sup> and eliminating the problem of overlapping membership between journals.<sup>64</sup>

I focused my study on the past five years (2008–09 academic year through the 2012–13 academic year) so that my data would be comprehensive enough to provide an accurate picture of women's involvement on law reviews, yet restricted enough to honor the rapidly changing nature of student-run law reviews that do not necessarily adhere to or even have long-term institutional memory.<sup>65</sup>

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<sup>62</sup> Aside from ranking order, the most significant differences between these two lists is that Notre Dame Law School, Fordham Law School, and William & Mary Law School do not appear on the *U.S. News & World Report* list of top twenty law schools, and conversely, Duke University School of Law, George Washington University Law School, and the Gould School of Law at the University of Southern California do not appear on the Washington & Lee Law Library list of top twenty law reviews.

<sup>63</sup> At a number of schools, students are considered first for law review and then considered for membership on other journals only if denied law review membership. For purposes of statistical analysis, this means that membership on the "secondary" journals is not an entirely independent event; rather, it is influenced by the outcome of a separate event.

<sup>64</sup> Several schools, including Harvard and the University of Texas, allow members of their law reviews to simultaneously serve as members of other journals. This overlapping membership would have posed a problem for my study that was not necessary to confront for purposes of this Note.

<sup>65</sup> Several schools, including Yale and Notre Dame, specifically emphasized that their law review admissions processes are highly subject to change from year to year, and others,



## B. Enrollment Data

To perform as accurate an analysis as possible, I sought to collect all of my quantitative data from independently reported and verified sources. I therefore took my general school enrollment data from archives of the *ABA-LSAC Official Guide to ABA-Approved Law Schools*,<sup>66</sup> and I determined law review membership by gender for each school by manually counting and sorting names on the past five years' mastheads from each school's general interest law review.<sup>67</sup>

Although women have come to comprise nearly half of the nation's juris doctorate (J.D.) candidates at ABA-approved law schools,<sup>68</sup> specific enrollment figures vary quite widely among different schools and between individual years. The average female J.D. enrollment across the twenty schools and five years in my data sample was 46.27%, but women made up as much as 58.59%<sup>69</sup> and as little as 39.35%<sup>70</sup> of J.D. students at particular schools during particular years. This wide variation increased the importance of comparing law review memberships to specific enrollment figures in order to accurately determine whether law review gender disparity exists and how great that disparity is at particular schools during particular years.<sup>71</sup>

Importantly, the J.D. enrollment figures do not exactly represent the pool of potential law review members for three main reasons. First, the J.D. enrollment figures include first-year students, whereas law review membership comprises only second- and third-year students.

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including New York University, indicated that their law review admissions processes had undergone relatively recent changes.

<sup>66</sup> See LAW SCHOOL ADMISSIONS COUNCIL, *ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS ARCHIVES* (2006–2008 and 2009–2012), <http://www.lsac.org/lisacresources/publications/official-guide-archives.asp#M-O>.

<sup>67</sup> See *infra* Part II.B.

<sup>68</sup> See *supra* notes 14–17 and accompanying text.

<sup>69</sup> University of California at Berkeley during the 2008–2009 academic year.

<sup>70</sup> University of Virginia during the 2008–2009 academic year.

<sup>71</sup> This is to be contrasted with an approach that might, for example, assuming that an average figure such as 46.27% was mostly accurate for all schools in the sample and comparing individual law review membership compositions to that figure.

Second, the enrollment figures count both full-time and part-time students for those schools with both programs, but part-time students are sometimes not eligible to become members of law review.<sup>72</sup> Third, because applying for law review membership is voluntary, not all J.D. candidates counted in the enrollment figures are necessarily candidates for law review membership.

Despite these shortcomings, I nonetheless found the J.D. enrollment figures sufficient for my purposes—that is, determining whether or not a law review gender disparity exists and identifying general similarities among law review admission processes that may help stimulate discussions on possible causes of this disparity—because the gender composition of new first-year classes is usually not much different from the second- and third-year classes at the schools in my study. Furthermore, the results of my statistical analysis are significant and consistent enough across various tests to remain true even if the enrollment figures were altered to better reflect only the pool of potential law review members.

### C. Masthead Collection

Nearly all of the top twenty law reviews' mastheads for the past five years were publicly available on the internet, and I was able to obtain those that were not through either direct request or manual collection from hard copies of law reviews. Once I collected the mastheads, I determined the gender composition of the law review memberships by manually counting the number of men and number of women on the mastheads. Most members' genders were discernible by their typically masculine or feminine names, such as "Joseph" or "Lauren."<sup>73</sup> For

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<sup>72</sup> Georgetown University Law Center and Fordham Law School have part-time programs and thus may be more susceptible to this inaccuracy than the other schools in my study.

<sup>73</sup> I acknowledge that my methodology relies upon a binary conception of gender identity, and I wish to clarify that I do not support this type of binary approach to gender identity

the members whose names were gender-neutral (“Alex” or “Jamie”), particularly uncommon (“Kapiljeet”), or ambiguous for any other reason, I conducted internet research to determine the individual’s gender. This procedure enabled me to identify the genders of the members represented by approximately 99.5% of all the names on all the mastheads.<sup>74</sup> Because I was able to identify the genders of such a high number of the total members, I noted and then simply did not count the few remaining “unknowns,” and I adjusted my total membership counts accordingly.

A practical side benefit of examining mastheads to determine gender composition was that it removed some onus from the law review editors who generously took time to speak with me about their law review’s selection methods and their perceptions of the way those methods impact law review gender diversity. Furthermore, because I examined all of the mastheads personally, each and every name was subject to exactly the same treatment and level of scrutiny.

#### D. Qualitative Data

##### 1. Publicly Available Information

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issues. Short of finding and contacting each of the thousands of law review members listed on these mastheads, however, I was unable to logistically design my empirical study in a way that would account for members who identify as transgender, nongendered, genderfluid, or otherwise genderqueer. Additionally, the other key segment of my quantitative data, the publicly available enrollment data, classifies students as only either male or female. Ideally, we will move away from this type of binary thinking in future years so that researchers will one day be able to conduct a study like this that accounts for a much broader range of gender identity.

<sup>74</sup> It is entirely possible and quite likely that several of the names that I counted as “typically masculine” may actually belong to women and vice versa. As with non-binary gender identities, *see supra* note 73, I simply did not have the resources to individually contact each of the thousands of law review members included in my study. I regret any errors that may have resulted from this possible gender misclassification. Because my sample size is relatively large and my study aims to identify only broad trends, any possible errors of this nature should have minimal effects on my ultimate analysis and discussion.

Among the top twenty law reviews, seventeen provide at least some brief description of their admission processes on public websites.<sup>75</sup> I began my empirical research by collecting this publicly available information and arranging it into a basic table so that I could best identify what additional data I should solicit directly from law review editors. I initially divided this table into columned checklists recording whether each law review used the following selection methods: (1) grade-on, (2) write-on, (3) a composite or combination score of some sort, (4) publish-on (sometimes also called “Note-on”), and (5) personal statement and/or affirmative action.

## 2. Solicited Information

After organizing and reviewing publicly available information on law review selection processes,<sup>76</sup> I wrote letters to the editors-in-chief of each of the top twenty law reviews requesting the following information: (1) a brief description of selection criteria, i.e., how many applicants “grade on,” how many applicants “write on,” and how many applicants are offered membership through some other selection criteria, and (2) within each of these selection categories, how many of the most recently admitted class of members (2012–13) were men and how many were women. To clarify the second part of my request, I provided the following example: “If your law review admits 15 grade on members, 15 write on members, and 15 members on some other basis, I am interested to know the gender breakdown of the members in each of those three categories, e.g., 10 men and 5 women graded on, 7 men and 8 women wrote on, etc.” Finally, I expressed interest in knowing whether, why, and how each law review currently implements any affirmative action policies.

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<sup>75</sup> The exceptions are the *University of Pennsylvania Law Review*, the *Notre Dame Law Review*, and the *William & Mary Law Review*.

<sup>76</sup> See *supra* Part II.C.

I sent these letters to the editors-in-chief via email and invited them to respond by either phone or email. I collected responses from sixteen of the twenty law reviews over a two-month period from mid-November 2012 through mid-January 2013.<sup>77</sup> About half of the editors-in-chief who responded provided me with exactly the information I requested. The other half responded that they either did not keep records of gender breakdown by selection method<sup>78</sup> or that they were unwilling to share that information given their desire to preserve the complete confidentiality and anonymity of their processes.<sup>79</sup>

### III. DATA AND STATISTICAL ANALYSIS

#### A. General Observations

To begin my analysis, I recorded the raw numbers of women enrolled in each law school during each year, women on the masthead of each law review during each year, men enrolled in law school during each year, and men on the masthead of each law review during each year. I then used these raw numbers to generate basic percentages by gender for both law school enrollment and law review membership. I also used these raw numbers to generate ratios for both women and men by dividing the number of women on the masthead by the number of women enrolled in the school and repeating the same process for men. This resulted in a mean value of 0.1098 for men and 0.0921 for women, meaning that within my sample of schools and years, nearly 11% of male J.D. candidates were members of law reviews while approximately 9% of J.D. candidates were members of law reviews.

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<sup>77</sup> The four law reviews that did not respond to my inquiry were *Columbia Law Review*, *Minnesota Law Review*, *UCLA Law Review*, and *Fordham Law Review*.

<sup>78</sup> The following law reviews informed me that they do not track gender breakdown by selection method: *Michigan Law Review*, *University of Pennsylvania Law Review*, *Texas Law Review*, *Georgetown Law Journal*, *Vanderbilt Law Review*, and *University of Chicago Law Review*.

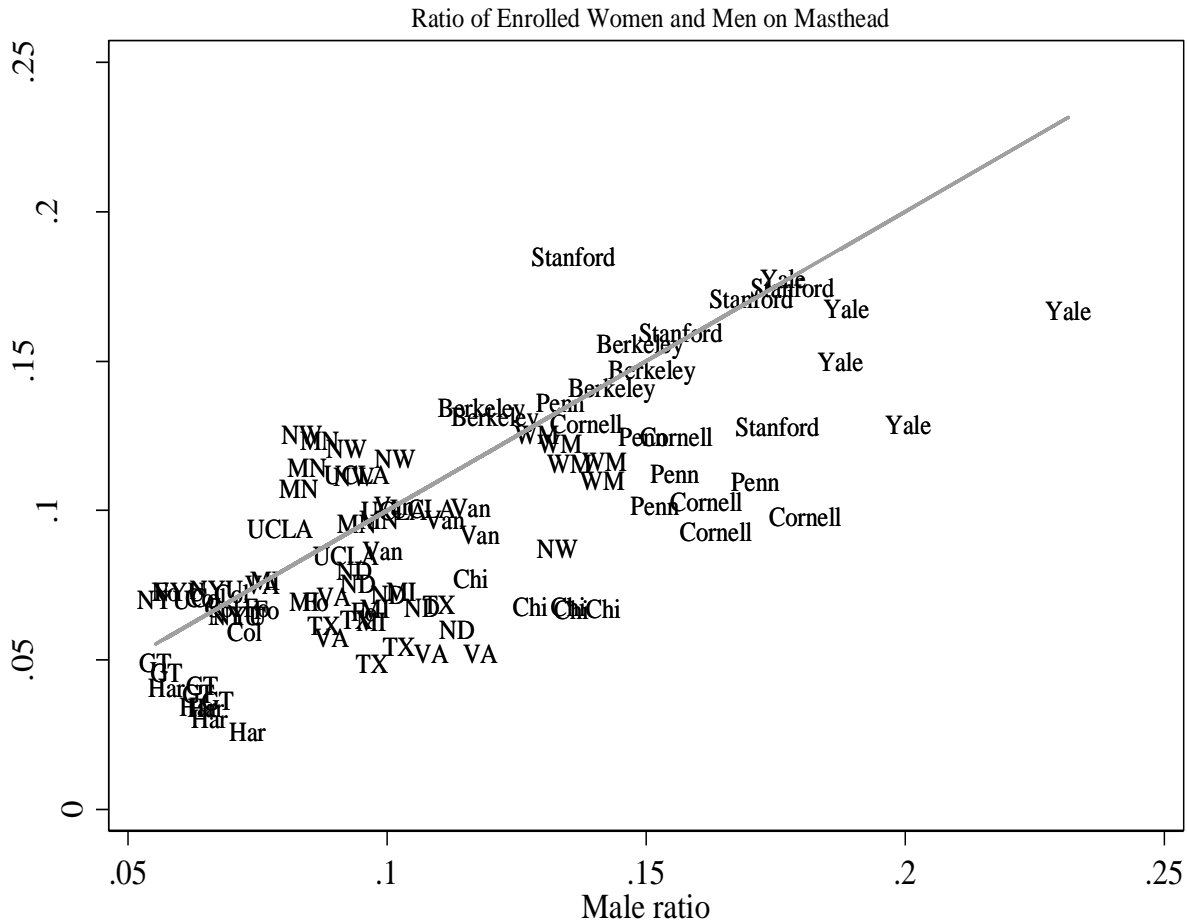
<sup>79</sup> The following law reviews did not wish to publicize gender breakdown by selection method: *Harvard Law Review*, *Virginia Law Review*, and *William & Mary Law Review*.

After generating ratios, I ran a two-sample t-test for all twenty schools and all five years in my study. This yielded a statistically significant  $p$ -value of 0.0011,<sup>80</sup> showing clearly that there is a statistically significant gender disparity among the top twenty law reviews. I then ran a linear regression on the data that accounted for multiple observations of the same schools across different years and reaffirmed the gender disparity apparent from the aggregate two-sample t-test. Despite this overall gender disparity, however, not every law review membership displays a statistically significant gender disparity, and even among those that do, the severity of the gender disparity varies quite widely.<sup>81</sup> This non-universality is illustrated most clearly in the following scatter plot:

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<sup>80</sup> The statistical tests in my study use a 95% confidence interval, reflecting a confidence level of 0.05.

<sup>81</sup> See *infra* Part III.B.



The identity line represents my null hypothesis—that is, a  $y=x$  line where the  $x$ -axis is ratio of men and the  $y$ -axis is ratio of women (or, in other words, complete gender parity on the school’s law review given its total numbers of male and female J.D. candidates)—and takes into account the different sizes of total enrollment and law review membership at each of the schools in my study. Therefore, the schools above that line have higher ratios of women than men, and the schools below the line have higher ratios of men than women. Each school has five points on the scatter plot representing each of the five years in my study.

Interestingly, most of the schools’ separate points on the plot are relatively close to one another, or, to put it differently, most of the schools have at least three or four of their five total points grouped in about the same place on the plot. For example, most of Cornell’s points fall

between 0.1 and 0.15 on the  $y$ -axis and between the 0.15 and 0.2 on the  $x$ -axis, and all of Cornell's points save one are below the identity line. The same is true for both Penn and William & Mary.

A further interesting observation is that this scatter plot reveals the differences between schools in the ratios themselves. For example, Harvard's placement in the bottom left-hand corner of the plot indicates relatively low ratios for both men and women, meaning generally that fewer than one in fifteen students enrolled at Harvard are members of the *Harvard Law Review*. By contrast, Yale's points are grouped towards the upper right-hand corner of the plot, revealing that nearly one in four students enrolled at Yale are members of the *Yale Law Journal*. This placement appears to roughly correlate with the sizes of the school populations; that is, the schools with lower total enrollments tend to have higher ratios for both men and women, and this makes sense in light of each law review's need for a staff of a certain size to run a successful publication. Not all of these placements line up neatly in order of school size, however. Chicago, for example, has some of the lowest enrollment figures of the schools in my study, yet its ratios are still lower than about half of the other schools' (including similarly-sized Vanderbilt).

#### B. Two-Sample T-Test

To take a closer look at each school's membership, I used a two-sample  $t$ -test to analyze the enrollment and masthead data that I collected from each school. I chose the two-sample  $t$ -test because it is one of the most common statistical tests used to determine whether the average difference between two groups is truly significant or whether that difference could be merely the product of random chance, and here, I sought to answer the question whether there was any significant difference between the average ratio of women on a particular law review and the



average ratio of men on that law review.<sup>82</sup> My null hypothesis was that there was no significant difference between these average ratios.

For each school, I was most interested in the mean values for both women and men and the *p*-value, which told me whether the difference between those means was significant. If a school's *p*-value was greater than 0.05, then I accepted the null hypothesis for that school; that is, I concluded that there was no significant difference between the average ratio of women and the average ratio of men on that school's law review.

The following table summarizes my two-sample t-test findings for each of the schools:

	Mean Value for Women	Mean Value for Men	t-value	p-value
<b>Berkeley</b>	0.1424	0.1363	-0.7227	0.4904
<b>Chicago</b>	0.0697	0.1312	12.8188	0
<b>Columbia</b>	0.0684	0.0681	-0.1314	0.8987
<b>Cornell</b>	0.1098	0.1599	5.0314	0.001
<b>Fordham</b>	0.0690	0.0782	1.4151	0.1948
<b>Georgetown</b>	0.0426	0.0616	5.9182	0.0004
<b>Harvard</b>	0.0336	0.0649	9.0507	0
<b>Michigan</b>	0.0701	0.0916	3.9449	0.0043
<b>Minnesota</b>	0.1079	0.0894	-3.0634	0.0155
<b>NYU</b>	0.0696	0.0650	-1.3266	0.2213
<b>Northwestern</b>	0.1128	0.1007	-1.1083	0.2999
<b>Notre Dame</b>	0.0714	0.1018	6.0133	0.0003
<b>Penn</b>	0.1172	0.1521	4.0976	0.0034
<b>Stanford</b>	0.1639	0.1631	-0.0633	0.9511
<b>Texas</b>	0.0598	0.0983	7.5021	0.0001
<b>UCLA</b>	0.0987	0.0947	-0.6185	0.5535
<b>Vanderbilt</b>	0.0960	0.1091	2.7573	0.0248
<b>Virginia</b>	0.0619	0.0962	3.83	0.005
<b>William &amp; Mary</b>	0.1183	0.1362	4.8924	0.0012
<b>Yale</b>	0.1584	0.1970	3.0153	0.0167

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<sup>82</sup> I calculated these ratios by using dividing the average number of women on the law review's masthead by the average number of women enrolled in the school, *see supra* Part III.A.

Of the twenty schools I included in my study, two had  $p$ -values of 0 at three decimal places: University of Chicago Law School and Harvard Law School. This particularly low  $p$ -value means that at each of these two schools, there is less than a one in 10,000 chance that the ratio of women (or men) on the law review would randomly result given the numbers of women and men enrolled in each school. Not far behind the University of Chicago Law School and Harvard Law School were the University of Texas Law School ( $p$ -value of 0.0001), Notre Dame Law School ( $p$ -value of 0.0003), and the Georgetown University Law Center ( $p$ -value of 0.0004).

Several schools in my study yielded  $p$ -values high enough to warrant acceptance of the null hypothesis, meaning that I could not reject with 95% confidence the possibility that any gender disparity resulted from anything other than random chance. The schools with the highest  $p$ -values were Stanford Law School ( $p$ -value of 0.9511) and Columbia Law School ( $p$ -value of 0.8987). The next two highest  $p$ -values belonged to the UCLA School of Law (0.5535) and the UC Berkeley School of Law (0.4904). Although their  $p$ -values were quite a bit lower than the three previously listed schools, Northwestern University Law School ( $p$ -value of 0.2999), New York University School of Law ( $p$ -value of 0.2213), and Fordham Law School ( $p$ -value of 0.1948) all had close enough ratios of men and women on their law reviews that I cannot reject the possibility that any disparity simply resulted from random chance.

### C. Qualitative Data

In an effort to identify possible links between law review gender diversity and selection methods, I used publicly available information and information solicited from the editors-in-chief of the top twenty law reviews to gain as much an understanding as I could about how each

law review selects its members.<sup>83</sup> I then divided these law reviews into four rough categories: (1) “Write-on only” for law reviews that did not at all consider candidates’ grades in their admissions processes, (2) “Heavily writing” for law reviews that either weighted writing scores more heavily than grades in their admissions consideration, admitted more members based on writing scores than grades, or some combination of the two, (3) “Evenly grades/writing” for law reviews that gave approximately equal weight to grades and writing scores evenly, admitted the same numbers of students by a “write-on” method as by a “grade-on” method, or both, and (4) “Heavily grades” for law reviews that weighted grades more heavily than writing scores, admitted more members based on grades than writing scores, or some combination of the two.

This yielded the following table:

	<b>Write-on only</b>	<b>Heavily writing</b>	<b>Evenly grades/writing</b>	<b>Heavily grades</b>
<b>Berkeley</b>	x			
<b>Chicago</b>				x
<b>Columbia</b>			x	
<b>Cornell</b>				x
<b>Fordham</b>				x
<b>Georgetown</b>		x		
<b>Harvard</b>		x		
<b>Michigan</b>		x		
<b>Minnesota</b>		x		
<b>Northwestern</b>		x		
<b>Notre Dame</b>				x
<b>NYU</b>			x	
<b>Penn</b>			x	
<b>Stanford</b>	x			
<b>Texas</b>		x		
<b>UCLA</b>		x		
<b>Vanderbilt</b>			x	
<b>Virginia</b>				x
<b>William &amp; Mary</b>			x	
<b>Yale</b>	x			

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<sup>83</sup> See *supra* Part II.D.

Importantly, these categorizations are based only on my own understanding of each law review's admission process, and some schools were more difficult to classify than others.<sup>84</sup> Additionally, certain schools that I have grouped together within the same category nonetheless have very different admissions processes, and some of the law reviews admissions processes are subject to change from year to year.<sup>85</sup> Finally, a number of law reviews noted that in addition to the more conventional admissions process that considers grades and/or writing scores, they have a "publish-on" or "note-on" admissions route through which non-law review members are offered membership if their work is accepted for publication by the law review, and other schools noted that they have a separate admissions process for transfer students.<sup>86</sup>

#### IV. DISCUSSION

##### A. Key Observations

##### 1. Selection Methods

Because my primary goal in this Note at the outset was to analyze gender disparity on law reviews and identify commonalities that might help explain that disparity, I begin my discussion here with a look at overlap between schools' placement in my quantitative and qualitative analyses; in other words, I look first at similarities among admissions processes on

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<sup>84</sup> Classifying a law review as "Evenly grades/writing," for example, called for more subjective judgment than classifying a law review as "Writing only."

<sup>85</sup> In their responses to my requests for information, the editors-in-chief of the *Yale Law Journal* and *Notre Dame Law Review* both specially emphasized that their admissions processes often change on a yearly basis: the *Yale Law Journal's* admissions process is governed at the discretion of its editorial board, and the *Notre Dame Law Review's* admissions process is similarly governed at the discretion of its editor-in-chief.

<sup>86</sup> Although I do not wish to minimize the differences between law reviews' admissions processes or the impact of additional admissions processes, I limited my categorization to four broad categories in order to keep my analysis simple enough to fulfill my goal of beginning a discussion about law review gender diversity by identifying similarities between law review admissions processes that may help explain similarities among the gender composition of those law reviews' memberships.

law reviews with similar gender disparities. I then follow up on this inquiry by examining affirmative action practices as a possible root of similarity between law reviews with similar gender composition.

The five schools in my study with the greatest gender disparities, in descending order of gender disparity, were the University of Chicago Law School, Harvard Law School, University of Texas Law School, Notre Dame Law School, and the Georgetown University Law Center.<sup>87</sup> All of these law reviews share in common that they consider both grades and writing score in some way during their admissions processes. Beyond this basic similarity, however, these law review admissions processes are quite different, so much so that I classified three as “heavily writing” (Harvard, Texas, and Georgetown) and the other two as “heavily grades” (Chicago and Notre Dame). To highlight just how different these processes are, for example, *Harvard Law Review* admits no members on the basis of grades alone and only fourteen of its forty-four new members each year on the basis of a combination of grades and writing score,<sup>88</sup> whereas *Notre Dame Law Review* selects fifteen of its twenty-five new members each year on the basis of grades alone.<sup>89</sup>

At the other end of the spectrum, seven schools in my study showed no statistically significant gender disparity. In descending order of gender parity, these schools are the following: Stanford Law School, Columbia Law School, UCLA School of Law, UC Berkeley School of Law, Northwestern Law School, New York University School of Law, and Fordham

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<sup>87</sup> See *supra* Part III.B.

<sup>88</sup> See e-mail from Conor Tochilin, President, Vol. 126, *Harvard Law Review*, to author (Nov. 13, 2012, 3:45 p.m.) (on file with author).

<sup>89</sup> See e-mail from Joseph Florczak, Editor-in-Chief, Vol. 88, *Notre Dame Law Review*, to author (Nov. 15, 2012, 4:11 p.m.) (on file with author).

Law School.<sup>90</sup> These seven schools were scattered across all four possibilities that I created to categorize admissions processes. Indeed, the differences among these schools' admissions processes are so great that two of the seven—Stanford and Berkeley—do not consider anything other than writing scores, whereas the other five consider at least some other criterion to a significant degree.

The remaining eight law reviews' memberships each display statistically significant gender disparities, but again, these eight law reviews are spread across the four admissions process categories, and even those law reviews grouped within the same category use markedly different processes. Aside from noting that most (but not all!) of these law reviews use multiple selection methods to ultimately create a full class, it is very difficult to pinpoint any more specific similarity that might account for their highly similar gender disparities.

## 2. Gender Breakdown by Selection Method

Several of the editors-in-chief were unable or unwilling to share gender breakdown by selection method for the most recently admitted class of law review members. A few editors-in-chief, however, did share this information with me. This data, though not comprehensive enough to use for any purpose of statistical analysis or evaluation, adds an interesting anecdotal piece to the developing picture of the gender disparity on law reviews.

As an associate on the *Cornell Law Review*, my initial interest in law review gender diversity only increased upon learning that out of sixteen exclusively “grade-on” associates in my class, only two were women.<sup>91</sup> Similarly, only three of the fifteen total “grade-on” members

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<sup>90</sup> See *supra* Part III.B.

<sup>91</sup> See Telephone Interview with Susan G. Pado, Administrative Assistant, *Cornell Law Review* (Jan. 9, 2013).

of the 2012–13 class on the *Notre Dame Law Review* were women.<sup>92</sup> Anecdotal evidence like this might seem to initially support a hypothesis that the “grade-on” selection method is a primary culprit leading to gender disparity in law review membership, especially because highly statistically significant gender disparities characterize both the *Cornell Law Review* and *Notre Dame Law Review* memberships.

Interestingly, however, the contemporary class of members on the *Stanford Law Review*, who could only write-on, comprises fifteen women and twenty-nine men, and the contemporary class members of the *Yale Law Review* similarly comprises twenty women and thirty-four men. This leads to a very similar total membership breakdown by gender, despite completely different—and indeed opposite, if one views the “heavily grades” oriented Cornell and Notre Dame processes as the other end of the spectrum from the “write-on only” processes at Stanford and Yale—admissions processes: *Cornell Law Review*’s 2012–13 class comprised thirteen women out of forty-two total members (approximately 31% women), *Notre Dame Law Review*’s 2012–13 class comprised nine women out of twenty-five total members (approximately 36% women), *Stanford Law Review*’s 2012–13 class comprised fifteen women out of forty-four total members (approximately 34% women), and *Yale Law Review*’s 2012–13 class comprised twenty women out of fifty-four total members (approximately 37% women). This evidence, though limited in scope, increases support for the conclusion that selection methodology does not make any definitive difference to the gender composition of law review membership.

### 3. Affirmative Action and Additional Admissions Considerations

Several editors-in-chief shared with me explicitly that they either do or do not implement any affirmative action practices while selecting new members for their law reviews. Among the

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<sup>92</sup> See e-mail from Joseph Florczak, *supra* note 89.

law reviews that do practice some form of affirmative action, the practices vary widely, ranging from asking candidates to identify in a personal statement any characteristic or experience that might make them unique to reserving a certain number of seats in the class to be filled at the discretion of the senior editorial board or specially appointed diversity committee.

I could discern no clear pattern or relationship between these practices and the gender disparity in law review memberships. Nonetheless, it may be the case that affirmative action practices are reducing formerly present gender disparities; a few editors-in-chief indicated to me that historical problems of minority underrepresentation on their law reviews were precisely what inspired their law reviews to adopt affirmative action practices. The editor-in-chief of the *New York University Law Review*, for example, reported that in recent years, women generally only comprised one-third of the newest class while men comprised the other two-thirds, and this persistent underrepresentation of women played a major role in leading the *New York University Law Review* to reserve twelve out of fifty seats yearly for holistic review by a Diversity Committee that selects candidates based primarily on their resumes, personal statements, and a number of other factors, including gender.

Whether or not affirmative action practices effectively diversify law review membership is an entirely separate query from whether law reviews *should* implement affirmative action practices in an effort to diversify law review membership. Indeed, even if a single selection method could be identified as the cause of gender disparity in law review membership, whether or not a law review should alter its admissions process to account for this is a normative question that lies properly in the hands of each law review's editor-in-chief and editorial board. Several law reviews, including the *Stanford Law Review* and *Northwestern University Law Review*, indicated that they do not practice any affirmative action because they desire to preserve the



complete anonymity of their admissions processes. In lieu of affirmative action, these schools attempt to diversify their memberships by actively reaching out to their school's affinity groups for underrepresented minorities, including women, to promote law review participation and explain admission requirements. Notably, despite their rejection of affirmative action practices, neither the *Stanford Law Review* nor the *Northwestern University Law Review* display any statistically significant gender disparity.

### B. Importance

Establishing from independently reported and verified data that a gender disparity exists in the memberships of the top twenty law reviews, especially viewing these law reviews as the models for the rest of the nation's several hundred legal journals, adds support to the numerous scholarly arguments that women are less successful than men in law school.<sup>93</sup> This finding may even reinforce arguments that women feel alienated from their law schools,<sup>94</sup> especially in light of the fact that women appear to be underrepresented on law reviews that have very different selections criteria and admissions processes.

The gender disparity on law reviews is not only symbolic of the gender disparity in the legal profession as a whole, but it also likely bears a causal relationship to the greater gender disparity. In an economic period in which many commentators argue that it is prohibitively expensive for students to attend anything but the nation's top-ranked law schools (and some argue that attendance is not worthwhile even at those schools), being a member of law review is more important than ever.<sup>95</sup> Therefore, if fewer women than men are members of law reviews,

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<sup>93</sup> See *supra* notes 50–51 and accompanying text.

<sup>94</sup> See *supra* notes 27–29 and accompanying text.

<sup>95</sup> See Menachem Wecker, *Law Review Leads To Legal Jobs, Recruiters Say*, U.S. NEWS (Jan. 19, 2012), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2012/01/19/law-review-leads-to-legal-jobs-recruiters-say>.

then this means it is likely that fewer women than men are obtaining the most desirable legal jobs, and indeed, this is exactly what the most current data shows: there is a gender disparity among equity partners at top law firms, general counsels at Fortune 500 companies, and deans at law schools.<sup>96</sup> Law review membership may also directly impact women's additional opportunities to excel in law school, such as having their papers published.<sup>97</sup> Law reviews are, for better or for worse, widely regarded as accurate barometers for an individual's performance in a demanding job, especially at a prestigious law firm.<sup>98</sup>

### C. Explanations

My research is not broad enough nor is my expertise great enough to begin to adequately address the myriad possible explanations for the observed gender disparity on the top twenty law reviews. I therefore choose to focus my discussion in this Part on one key finding that my work does adequately cover: the persistent gender disparity among the top twenty law reviews is *not* experienced by each of these law reviews individually. A gender disparity does not exist on every law review, and no particular selection method—including use of affirmative action practices—seems to be the single or even major cause of the overall gender disparity in law review membership. This non-universality is significant because it suggests that the gender disparity, though its source remains elusive, is not inevitable. This means that it may be entirely possible for law reviews to achieve gender parity if they wish to do so; indeed, it appears that several law reviews already have.

The non-universality of the gender disparity further raises the possibility that it is not the law review that is causing the disparity at all. Rather than the gender disparity clearly resulting

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<sup>96</sup> See CATALYST SURVEY, *supra* note 20.

<sup>97</sup> See Mullins & Leong, *supra* note 2, at 387.

<sup>98</sup> See Wecker, *supra* note 95.

from a law review “grade-on” selection method, an inherently biased writing competition, or even solely from processes that reject affirmative action for women, it could simply be the case that women are affirmatively *choosing* to not join law reviews.

A woman might decline to apply for law review membership for any number of reasons. This choice could be the effect of women’s feelings of alienation from their law schools, the theory first suggested by Lani Guinier and endorsed by many scholars since then. Alternatively, the disparity could be a result of women entering law school already at some disadvantage to their male counterparts.<sup>99</sup> I suggest instead that women, rather than being *unable* to succeed in law school for any reason, simply *choose* to not succeed in law school by the conventional markers of success, such as law review membership. It is not that women cannot make law review; it is rather that oftentimes they are not interested in doing so.<sup>100</sup>

A recent publication of the Law School Admissions Council included the following statements in summary of its empirical findings:

The women in our sample reported being as satisfied with law school as the men; had opportunities to do some of the best jobs in the profession, including large firm practice, corporate counsel positions, and academic positions; enjoyed at least as much mentoring as the men; and expressed greater satisfaction with their careers and work–family balance. On the issue of child care, our

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<sup>99</sup> For reasons not entirely understood, women generally enter law school with higher undergraduate GPAs but lower LSAT scores than their male counterparts. See Richard K. Neumann, Jr., *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 419, 421–22 (2004). If LSAT scores are generally accepted as better predictors of law school success than undergraduate GPAs, then this data could suggest that women are entering law school at a relative disadvantage to men.

<sup>100</sup> This theory is not entirely novel. Some scholars advance self-selection as a large part of the explanation for law review gender disparity, see, e.g., Leong, *supra* note 50 **Error! Bookmark not defined.**, at 289 (“I believe . . . that women are affirmatively choosing not to try out for law review.”), while others reject this idea, see, e.g., Guinier et al., *supra* note 23, at 29 (claiming that women apply to law review “at rates proportionate to their numbers in the Law School”); Bowers, *supra* note 51, at 154 (asserting that “women participate in the write-on competition at a level equal to or higher than their proportion in the class”).

data suggest that more men and women who want to perform child care are entering the profession and that they are taking significantly longer periods away from paid work to perform child care and working fewer hours each year. Unfortunately there is still a substantial price to pay for the opportunity to perform child care for both men and women in terms of a substantially reduced probability of being a partner and significantly reduced income.

This summary effectively captures the tension between a woman's potential for success in both her career and at home. This tension does not arise only after a woman graduates from law school. Instead, it manifests itself as early as the first year of law school, when the woman may affirmatively choose to spend more time than men on personal or family pursuits than on studying for exams or "writing on" to a law review.

This theory is consistent with numerous articles and opinion pieces over the past few months, from Anne-Marie Slaughter's "Why Women Still Can't Have It All" to Sheryl Sandberg's *Lean In*, arguing that contemporary professional culture is leading even ambitious modern American women to actively decline positions of traditional prestige, success, and power.<sup>101</sup> The basic reason for this trend is that even talented, career-driven women have interests and responsibilities that compete with or trump their professional goals, and the infinite nature of time requires the making of choices, priorities, and compromises. Although this can be equally true for both women and men, societal and cultural expectations pressure women to make these types of choices even while similarly situated men do not have to.<sup>102</sup>

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<sup>101</sup> See Anne-Marie Slaughter, *Why Women Still Can't Have It All*, ATLANTIC MONTHLY (July/August 2012), <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>; SHERYL SANDBERG, *Lean In: Women, Work, and the Will to Lead* (2013).

<sup>102</sup> See Slaughter, *supra* note 101 ("[W]omen [who] planned to combine careers and family in some way . . . almost all assumed and accepted that they would have to make compromises that the men in their lives were far less likely to have to make."); see also Kenneth G. Dau-Schmidt, et al., GENDER AND THE LEGAL PROFESSION: THE MICHIGAN ALUMNI DATA SET 1967–2000, LSAC RESEARCH REPORT SERIES 2 (March 2008) ("In undertaking a legal career,

Women law students are no different than their professional counterparts in the sense that these women may decline to seek positions of traditional prestige, success, and power—such as law review membership—because they often have interests and responsibilities they find more compelling than the law school rat race. Law review inarguably swallows an enormous amount of a law student’s time; indeed, it is this very characteristic that makes law review membership such an attractive resume item for law firm recruiters because “large law firms are looking for students who are willing to work between 80 and 100 hours a week without complaint.”<sup>103</sup> This is valuable time that a woman law student could alternatively devote to her relationship with her partner, her children, her home, or simply her personal hobbies and interests.

A common reward for doing well in law school is law review membership, which entails a significant load of additional work, and the reward for doing well on law review is often a prestigious legal job, which entails even more work than that. This is a cycle that begins early and could well never end without students and young attorneys affirmatively choosing to end it. Whether it is a force of biology, psychology, sociology, or historical male dominance, women are apparently much more willing than men to affirmatively end that cycle.<sup>104</sup>

Because I did not ask law reviews how many women applied for membership, my study does not clearly reveal whether or not women are affirmatively self-selecting out of the law

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both men and women have to choose where to situate themselves in dedicating hours and effort to child care or to their career. . . . Of course this ‘choice’ . . . [is] greatly constrained by personal characteristics, the expectations of mates, and social norms for behavior.”).

<sup>103</sup> Wecker, *supra* note 96 (“Most law students spend 40 to 50 hours a week attending class and studying, and law review typically adds another 20 hours a week. ‘That’s precisely what large law firms are looking for: smart workhorses,’ [a New York City attorney who runs his own firm] says.”).

<sup>104</sup> See Kay S. Hymowitz, *The Plight of the Alpha Female*, CITY JOURNAL (Aug. 2012), [http://www.city-journal.org/2012/22\\_4\\_alpha-female.html](http://www.city-journal.org/2012/22_4_alpha-female.html).

review selection process.<sup>105</sup> Even if women are not directly self-selecting out of the application process, however, they may still be indirectly self-selecting out by spending relatively little time studying or completing the writing competition, either of which would likely result in lower grades and writing scores (and, consequently, lower chances of securing law review membership offers). Rather than it being the case that women are disfavored by the Socratic method,<sup>106</sup> need more female role models on the law school faculty,<sup>107</sup> or just do not have the assertive personalities and presence that they need in order to be successful attorneys,<sup>108</sup> it may simply be the case that, like their professional counterparts, women law students are less inclined than their male counterparts to sacrifice family and outside interests for power and status.<sup>109</sup>

Simultaneously displaying both an ability to fully succeed in a historically male-dominated world and a general unwillingness to forego other obligations and interests—especially those that are familial—is not a characteristic exclusive to women in the legal profession. Women now dominate a number of professional industries traditionally perceived as typically male-dominated, including accounting, financial management, and medical science.<sup>110</sup> Ironically, much of the reason for this may be that these typically male-dominated professions

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<sup>105</sup> Although I did not request it, several editors indicated in their responses to me that their law reviews do not even record this information, let alone release it.

<sup>106</sup> See ABA COMMISSION ON WOMEN IN THE PROFESSION, *ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION* (1996); see also Guinier et al., *supra* note 24, at 3–4.

<sup>107</sup> See Felice Batlan, et al., *Not Our Mother's Law School?: A Third-Wave Feminist Study of Women's Experiences in Law School*, 39 U. BALT. L. F. 124, 147–48 (Spring 2009).

<sup>108</sup> See Tracy L. Wareing, *Issues Facing Women Lawyers Entering The Legal Profession*, 36-NOV ARIZ. ATT'Y 42, 42 (Nov. 1999).

<sup>109</sup> See Hymowitz, *supra* note 103.

<sup>110</sup> See U.S. DEPT. OF LABOR, WOMEN'S BUREAU, DATA AND STATISTICS, 2009. [http://www.dol.gov/wb/stats/stats\\_data.htm](http://www.dol.gov/wb/stats/stats_data.htm).

are allowing more flexible, innovative scheduling options that appeal to parents.<sup>111</sup> Law school, too, may be following this path: though law school was traditionally closed to women entirely, women now attend law school in numbers almost equal to men.<sup>112</sup> Like numerous other pursuits, from suffrage to military combat, women have proven that they can succeed in the previously male-dominated law school and the legal profession.

The understanding that women *can* succeed in law school to the same extent as men has enormous implications for potential reform efforts. Calling for change to the system may send the mistaken message that women cannot withstand the rigors of the law school system.<sup>113</sup> Worse yet, failing to recognize the multitude of women's successes in law school throughout the past few decades may prevent women's continuing advancement in the legal profession by sending a message that women are incapable of attaining successes that they are, in reality, already attaining. Rather than reforming schools to accommodate women's "timidity and delicacy," we should instead focus on efforts to promote understanding of the difficult choices women face and the ways that men can assist women in better balancing work and family obligations.

## V. CONCLUSION

My goal in this Note was to provide the first comprehensive statistical analysis of independently reported and verified data on law review membership in order to determine whether or not a gender disparity exists on law reviews. I further hoped that this analysis would indicate whether any given admissions process correlates particularly strongly with that gender

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<sup>111</sup> See Jenna Goudreau, *20 Surprising Jobs Women Are Taking Over*, FORBES MAGAZINE (Mar. 7, 2011), <http://www.forbes.com/sites/jennagoudreau/2011/03/07/20-surprising-jobs-women-are-taking-over/>.

<sup>112</sup> See *supra* discussion Part I.B.

<sup>113</sup> See Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. L. REV. L. & WOMEN'S STUD. 37, 39–40 (Fall 1997).

disparity. Interestingly, no single selection method or even combination of selection methods appears to consistently yield any greater number of women than men; some law reviews with similar admissions processes have very different membership compositions by gender, and some law reviews with very different admissions processes have very similar membership compositions by gender.

One might interpret this as a rather bleak picture of women's law review participation showing that no matter what a law review does, women will still have a more difficult time becoming members than men. I prefer instead to emphasize the non-universality of the gender disparity and suggest that the fact that seven of the twenty law reviews I studied did *not* display a significant gender disparity continues a positive narrative about women's increasing participation in law schools and the legal profession.

To further test my theory that the gender disparity (where it exists) marks women's unwillingness to participate rather than any systematic disadvantage in law school or the law review admissions process, it would be helpful to broaden future studies to reach more law reviews and inquire whether each of these schools have part-time programs or other flexible scheduling that might appeal to women with families. Furthermore, it would be interesting to study whether there is any connection between the median age of a law school population or law review membership and participation in the school's activities or law review.

Because there are any number of explanations for why women might be affirmatively opting out of law school or law review participation, this is a difficult concept to quantify. I posit only that women are, as evidenced by the seven out of top twenty law reviews with no gender disparity in their membership, entirely able to succeed in law school and gain law review membership. The gender disparity that does remain may very well be a result of women



affirmatively choosing not to participate in law reviews. This, in turn, could be a function of a school's writing competition demands,<sup>114</sup> or the school's culture more generally.

My hope now is that the work I have done for this Note will add to and stimulate the ongoing inquiry into women's experiences in law school. There are countless possibilities for future studies that build upon my own by encompassing a broader scope of years, schools, or both, or by delving more deeply into possible causes of the gender disparity by attempting to identify finer differences between law review admissions processes. Future studies could obtain a more accurate picture of law review gender disparity by comparing the gender composition of each law review's membership with the exact numbers of men and women who applied to each law review during each year. In addition to improving the accuracy of my general findings, these future studies would be much better able to address self-selection as a possible explanation for any law review gender disparity that exists.

I strongly encourage law schools that do not currently track gender composition to begin to do so, and I also encourage law schools that track but withhold this information to strongly consider releasing it publicly for the benefit of all law reviews and the legal profession as a whole. Without understanding exactly why women are dramatically underrepresented on some law reviews but not at all underrepresented on others, it is difficult to determine both whether the problem can be remedied and, more importantly, whether it even should be.

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<sup>114</sup> The format, content, and style of writing competitions vary widely. Some schools, such as the University of Pennsylvania and the University of Virginia, administer a writing competition that lasts over only a weekend or a full day. Other schools administer a writing competition that can take up to one or two weeks to complete, which might naturally tend to favor students with fewer commitments outside of law school.