

Gender Equity in Law School Enrollment: An Elusive Goal

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Law schools achieved a significant milestone in 2016: For the first time, women made up half of all J.D. students. Indeed, women slightly outnumbered men, occupying 50.3 percent of J.D. seats nationwide.¹ The percentage of women students has grown each year since 2016: In fall 2017, women constituted 51.3 percent of law students;² by fall 2018, the percentage had grown to 52.4 percent.³

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1. The American Bar Association (ABA) annually reports the number of men, women, and other J.D. students on this website: *Section of Education - ABA Required Disclosures: 509 Required Disclosures*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://abarequireddisclosures.org/Disclosure509.aspx> (last visited Oct. 31, 2020) [hereinafter *ABA Required Disclosures*]. We calculated the percentage of women students from the 2016 *J.D. Enrollment and Ethnicity (academic year)* spreadsheet. That sheet shows 55,766 women; 55,058 men; and 40 who chose the only other available category, “other,” but may have been non-binary or non-reporting. (Note that Wyoming recorded an additional 231 students as “other,” but that is clearly a data entry error: 231 is the sum of men and women students at that school.) Of the 110,864 J.D. students enrolled in 2016, 50.3 percent were women; 49.7 percent were men; and 0.036 percent were non-binary/other/non-reporting. Throughout this article, we refer interchangeably to “J.D. students” and “law students.” We do not include LL.M. students or other non-J.D. students in any of our analyses.
2. *Id.* (2017 *J.D. Enrollment and Ethnicity* spreadsheet). That spreadsheet shows a total of 56,486 women; 53,641 men; and 49 who chose the only other category, “other.” J.D. students thus were 51.3 percent women; 48.7 percent men; and 0.044 percent non-binary/other/non-reporting.
3. *Id.* (2018 *J.D. Enrollment and Ethnicity* spreadsheet). 53,010 men; 58,462 women; and 109 “other” J.D. students were enrolled that year—yielding percentages of 47.5 percent men; 52.4 percent women; and 1.0 percent non-binary/other/non-reporting. We do not address the “other” category in this paper, because so little data are available for those students, but we suggest that organizations should explore more fully the experiences of students who do not designate themselves as men or women. *See infra* text accompanying note 51.

These numbers are worth celebrating, but they do not reflect gender equity. Law schools draw their students from college graduates—and women significantly outnumber men in that pool. Women have earned more than half of all bachelor's degrees since 1981-82.⁴ Since 1999-2000, they have secured more than 57 percent of those degrees.⁵ Why don't law school enrollments reflect those percentages? Some other graduate programs attract significantly more women than legal education. Women, for example, have received more than half of all master's degrees since 1986-87;⁶ in 2019-20, almost three-fifths of those diplomas (60.7 percent) are predicted to go to women.⁷

Equally troubling, women attend less prestigious law schools than their male classmates. As we demonstrate in this article,⁸ the law schools that score highly in the *U.S. News* ranking—and that open the most employment doors for their graduates—enroll significantly fewer women than schools with lower rankings and more constricted job outcomes. Law schools have improved their enrollment of women, but they have not yet achieved gender equity.

We analyze the persistent gender gap in law school enrollment in Part I of this article. In Part II we explore the factors that may contribute to this gap. In Part III we propose several strategies for closing the gap. Enrollment equity alone will not put women law students on an equal footing with men; a sizable literature probes gender biases that pervade the law school environment.⁹ Redressing the enrollment gap, however, is an important step in improving the representation of women throughout the legal profession.¹⁰

4. *Digest of Education Statistics, Table 318.10: Degrees Conferred by Postsecondary Institutions, by Level of Degree and Sex of Student: Selected Years, 1869-70 Through 2029-30*, NAT'L CTR. FOR EDUC. STATISTICS, https://nces.ed.gov/programs/digest/d19/tables/dt19_318.10.asp?current.asp (2020) [hereinafter *Degree by Sex of Student*].
5. *Id.*
6. *Id.*
7. *Id.*
8. *See infra* Part I.C.
9. *See, e.g.*, LANI GUINIER, MICHELLE FINE & JANE BALIN, *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997); LINDA F. WIGHTMAN, *WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN* (1996); Hannah Brenner, *Expanding the Pathways to Gender Equality in the Legal Profession*, 17 *LEGAL ETHICS* 261 (2014); Katie Cion & Sarah Parker, *Annual Analysis of Glass Ceilings at HLS*, HARV. L. REC. (Feb. 22, 2019), <http://hlrecord.org/annual-analysis-of-glass-ceilings-at-hls/>; Ruth Anne French-Hodson, *The Continuing Gender Gap in Legal Education*, *FED. LAW.*, July 2014, at 80.
10. Numerous studies document the ways in which our profession leaves women behind. *See, e.g.*, ABA COMM'N ON WOMEN IN THE PROFESSION, *A CURRENT GLANCE AT WOMEN IN THE LAW* (April 2019), https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf; ABA COMM'N ON WOMEN IN THE PROFESSION, *FIRST CHAIRS AT TRIAL: MORE WOMEN NEED SEATS AT THE TABLE* (2015), https://www.americanbar.org/content/dam/aba/administrative/women/first_chairs_final.pdf; NAT'L ASS'N OF WOMEN LAWYERS, *2019 SURVEY REPORT ON THE PROMOTION AND*

The Gender Enrollment Gap

Legal education's enrollment gap has three components: (1) among college graduates, women are less likely than men to apply to law school; (2) law schools admit a smaller percentage of women applicants than men; and (3) the most prestigious law schools, which offer the widest range of job opportunities, enroll fewer women than their less prestigious counterparts. We explore each of these components in turn.

Applications

Women are significantly more likely than men to obtain a college degree: Since 1999-2000, women have earned more than 57 percent of all bachelor's degrees each year.¹¹ Those women, however, are less likely than their male peers to apply to law school. In 2000-2001, when women made up 57.3 percent of all college graduates, they constituted just 49.5 percent of law school applicants.¹² A gap of almost eight points thus separated the percentage of women among college graduates and their percentage among law school applicants. By 2009, the gap was larger: Women still obtained 57.2 percent of bachelor's degrees, but constituted just 47.2 percent of law school applicants—a gap of ten points.¹³

By fall 2018, the gender gap in applications had narrowed as women secured 57.3 percent of the bachelor's degrees awarded that year.¹⁴ During the same year, women constituted 53.5 percent of law school applicants.¹⁵ This gap is

RETENTION OF WOMEN IN LAW FIRMS (2019), <https://www.nawl.org/d/do/969> [hereinafter NAWL REPORT]; Kim Elsesser, *Female Lawyers Face Widespread Gender Bias, According To New Study*, FORBES (Oct. 1, 2018), <https://www.forbes.com/sites/kimelsesser/2018/10/01/female-lawyers-face-widespread-gender-bias-according-to-new-study/#7c29godfd4b55>.

11. *Level of Degree and Sex of Student*, *supra* note 4.
12. For the percentage of college graduates, see *id.* We calculated the percentage of women law applicants from data published by the Law School Admission Council (LSAC). LSAC, ARCHIVE: 2001-2015 APPLICANTS BY GENDER/SEX, <https://www.lsac.org/archive-2001-2015-applicants-gendersex> (last visited Oct. 31, 2020) [hereinafter LSAC APPLICANTS ARCHIVE]. In fall 2001, 38,230 women; 37,890 men; and 1,120 individuals who chose not to identify their gender applied to law school. Women thus constituted 49.5 percent of the applicant pool; men accounted for 49.1 percent; and applicants who declined to identify gender accounted for the final 1.4 percent. Only about one-third of law school applicants submit their applications during the same year they graduate from college. ASS'N OF AM. LAW SCH. & GALLUP, BEFORE THE JD: UNDERGRADUATE VIEWS ON LAW SCHOOL 59 (2018) [hereinafter BEFORE THE JD]. The percentage of women among college graduates, however, has remained so constant since 2000 that we pair graduation years with application years for convenience.
13. *Level of Degree and Sex of Student*, *supra* note 4; LSAC APPLICANTS ARCHIVE, *supra* note 12.
14. *Level of Degree and Sex of Student*, *supra* note 4.
15. See 2018 Current Volume Summary, LSAC, <https://www.lsac.org/sites/default/files/media/VolumeSummaryOriginalFormat%208-8-2018.pdf> (last visited Oct. 31, 2020) (reporting that 32,488 women; 27,508 men; and 682 individuals who did not indicate gender applied to law school that year, yielding a total of 60,678 applicants). LSAC's reporting practices changed slightly between 2015 and 2016. Since 2016, data include applicants for all terms and exclude deferrals. For previous years, LSAC reported only applicants for the fall term

smaller than in the past, but it still spans more than four percentage points. To put this a different way, about 3.3 percent of men with bachelor's degrees apply to law school, but just 2.9 percent of women did so.¹⁶ That's a modest gap, but one that still affects women's representation in both law school and the legal profession.

Admissions

The gender gap widens as law schools choose which students to admit. For every entering class between 2001 and 2018, schools admitted a higher percentage of men in their applicant pools than women. In 2001, for example, 69.1 percent of the men who applied to law school received at least one offer of admission. During the same year, just 66.3 percent of women received at least one offer—a gap of almost three percentage points. The gap rose to almost six points in 2006. During that year, schools offered admission to 66.5 percent of the men who applied, but just 60.6 percent of the women.¹⁷

After 2010, applications to law schools dropped markedly.¹⁸ Schools, however, continued to extend offers to a higher percentage of men than women. Almost three-quarters (73.5 percent) of the men who applied to law school in 2011 received offers, compared with 68.7 percent of women.¹⁹ In 2018, the most recent year for which data are available, 75.1 percent of men and 71.1 percent of women secured at least one offer of admission.²⁰ That gap (four percentage points) is larger than the one recorded in 2001.

and included deferrals. This reporting shift appears to have had only a modest impact on overall numbers.

16. We calculated these percentages by dividing the number of men/women law school applicants in 2018 by the total number of men/women college graduates that year. As explained in note 12 *supra*, the percentage of men and women who graduate from college varies little from year to year. We were able to simplify our calculations, therefore, by assuming that all 2018 law school applicants obtained their college degrees during the same year.
17. We calculated the percentages in this paragraph by dividing the number of men/women admitted to at least one law school each year by the number of men/women applicants that year. We drew applicant numbers from LSAC APPLICANTS ARCHIVE, *supra* note 12, and admitted student numbers from LSAC, ARCHIVE: 2001–2015 ADMITTED APPLICANTS BY GENDER/SEX, <https://www.lsac.org/archive-2001-2015-admitted-applicants-gendersex> (last visited June 24, 2019).
18. *Law School Enrollment: LST Data Dashboard*, LAW SCH. TRANSPARENCY, <https://data.lawschooltransparency.com/enrollment/all/?scope=national> (last visited Apr. 29, 2019).
19. We calculated these percentages from the sources cited in *supra*, note 17.
20. *See Admitted Applicants by Race/Ethnicity & Sex*, LSAC, <https://www.lsac.org/data-research/data/admitted-applicants-raceethnicity-sex> [<https://web.archive.org/web/20200224061838/https://www.lsac.org/data-research/data/admitted-applicants-raceethnicity-sex>] (reporting that 20,670 men and 23,090 women were admitted to a J.D. program that year). We calculated the percentages reported in text by dividing those numbers by the total number of men and women, respectively, who applied to law school that year. *See supra* note 15.

Prestige and Opportunity

Even after women apply to law school and secure admission, a striking gender gap remains: Men and women are not equally distributed among law schools. Instead, women are overrepresented at the lowest-ranking schools and underrepresented at the most elite ones. We used data drawn from an ABA website to calculate the percentage of men and women enrolled at each law school in fall 2018.²¹ In fall 2018, the five law schools most highly ranked by *U.S. News* all enrolled more men than women—even though women constituted 52.4 percent of all law students nationwide.²² At one of those schools, the University of Chicago, women made up only 47.0 percent of all J.D. students.

The top twenty schools showed a similar pattern. Women constituted just over half (50.5 percent) of students at those schools—at the same time that they made up 52.4 percent of law students nationwide. Eleven of these elite schools reported that less than half of their students were women. In addition to the University of Chicago, four other schools enrolled particularly small percentages of women: Cornell University (47.2 percent women), the University of Texas (46.2 percent women), the University of Virginia (45.8 percent women), and Duke University (45.6 percent women).

At lower-ranking schools, conversely, women constituted a higher percentage of the student body. Among the forty-seven schools ranked in the bottom quarter of the *U.S. News* survey in 2018, women occupied 55.2 percent of all seats—substantially more than the 50.5 percent of seats provided to women at the top twenty schools. Seven schools in the fourth-tier group maintained a student body that was more than 60 percent women.²³ One, North Carolina Central University, had a student body that was two-thirds (66.8 percent) women.

There were outliers, of course, on both ends of this spectrum. Berkeley's law school, ranked ninth by *U.S. News* that year, boasted a 2018 enrollment that was 59.7 percent women. Georgetown Law Center, ranked fourteenth, attracted a student body that was 53.9 percent women. Three schools in

21. Percentages for 2018 are drawn from the 2018 *J.D. Enrollment and Ethnicity* worksheet posted on the *ABA Required Disclosures* website, *supra* note 1.
22. We used the *U.S. News* rankings published in March 2018 for the analyses performed in this Article. 2019 *Best Law Schools*, U.S. NEWS & WORLD REPORT, <https://web.archive.org/web/20181020004937/https://www.usnews.com/best-graduate-schools/top-law-schools>. That edition of the rankings best matches the enrollment data we analyze. The rankings, however, are highly consistent from year to year; using a different version of the rankings would not affect our analyses. The top five schools in March 2018 were Yale (49.8 percent women), Stanford (49.6 percent women), Harvard (49.8 percent women), the University of Chicago (47.0 percent women), and Columbia (48.9 percent women).
23. These schools were Florida A&M University (61.1 percent women), New England Law School (63.6 percent women), North Carolina Central University (66.8 percent women), St. Thomas University in Florida (61.2 percent women), the University of La Verne (60.7 percent women), the District of Columbia Law School (64.0 percent women), and Atlanta's John Marshall Law School (66.2 percent women).

the bottom quarter of the *U.S. News* ranking, meanwhile, enrolled less than 48 percent women: the University of North Dakota (47.1 percent women), Southern Illinois University at Carbondale (43.1 percent women), and Liberty University (41.9 percent women).

Overall, however, the percentage of women enrolled at each law school in 2018 showed a significant correlation (.309, $p < .001$) with that school's *U.S. News* ranking.²⁴ Schools near the top of the *U.S. News* scale were significantly more likely than other schools to enroll a low percentage of women. Schools near the bottom of the scale tended to enroll a higher percentage of women.

This pattern, unfortunately, is not limited to a single year. When we analyzed similar data in 2016, we found that the percentage of women enrolled in each law school showed a similar, statistically significant correlation with that school's *U.S. News* ranking (.347, $p < .001$).²⁵ The 2018 correlation is slightly lower, but remains both statistically and practically significant.

The law schools that women attend have a substantial impact on their career prospects: Highly ranked schools open employment doors that, as a practical matter, are not available to graduates of lower-ranking schools.²⁶ Graduates of higher-ranked schools are also more likely to find jobs as practicing lawyers. The correlation between a school's *U.S. News* ranking and the percentage of its graduates who obtain full-time, long-term jobs requiring bar passage is quite high: $-.785$, $p < .001$.²⁷

24. The top ranking in *U.S. News* is "1." The positive correlation between the percentage of women enrolled at a law school and the school's ranking, therefore, indicates that as the school's ranking rose numerically the percentage of women tended to increase. Less prestigious schools (with higher numerical rankings) enrolled a higher percentage of women. We conducted all of our statistical analyses with IBM's SPSS Statistics 25 package. For these analyses, we assigned a rank of 173 to all schools in the unranked bottom quarter of the *U.S. News* scale. That number reflected the median value if all schools in that category had been ranked separately.
25. For the 2016 analysis, we used data from the 2016 *J.D. Enrollment and Ethnicity (academic year)* spreadsheet available at *ABA Required Disclosures*, *supra* note 1.
26. See, e.g., Ilana Kowarski, *Why Big Firms Care About Which Law School You Attend*, U.S. NEWS & WORLD REPORT (Aug. 1, 2018), <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-08-01/why-big-law-firms-care-about-which-law-school-you-attend>; Deborah Jones Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession*, 2015 MICH. ST. L. REV. 1043, 1091-97; Ben Taylor, *Why Law School Rankings Matter More Than Any Other Education Rankings*, FORBES (Aug. 14, 2014), <https://www.forbes.com/sites/bentaylor/2014/08/14/why-law-school-rankings-matter-more-than-any-other-education-rankings/#10728cbf2ddd>.
27. This correlation compares each school's rank in March 2018, see *supra* note 22, with employment outcomes (measured ten months after graduation) for the Class of 2018. We drew placement information from the ABA reports available at *Section of Education - ABA Required Disclosures: Employment Outcomes*, ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, <http://www.abarequireddisclosures.org/EmploymentOutcomes.aspx> (last visited Nov. 1, 2020) [hereinafter *ABA Employment Outcomes*]. Employment outcomes for the Class of 2018 are reported in the *Compilation—All Schools Data* for 2018.

To look more closely at the relationship between women enrolled and job prospects, we calculated the percentage of each school's 2018 graduates who within ten months after graduation obtained full-time, long-term jobs requiring bar passage.²⁸ Those percentages, like the values for *U.S. News* ranking, correlate significantly with the percentage of women enrolled at a school. Indeed, the correlation was even stronger than the one between percentage of women and *U.S. News* ranking: $-.450$, $p < .001$. Our previous research demonstrated similar correlations for earlier graduating classes.²⁹ Law schools with less desirable job outcomes tend to enroll a higher percentage of women than schools with more favorable employment records. Recent increases in the percentage of women attending law school have occurred in part because of their enrollment in low-ranking schools with weak employment prospects.

Explanations

Why do women lag behind men in law school applications, admissions, and attendance at the most prestigious schools? Women are educational high achievers, who are more likely than men to obtain both bachelor's and master's degrees,³⁰ but they have not achieved equity in law school enrollment. In this section we explore the factors that may explain each of these gender gaps.

Applications

Research suggests four reasons women with bachelor's degrees may not apply to law school at the same rate as men. First, although both men and women worry about the cost of law school, women express more concern than men. *Before the JD*, a national study of college students, found that 66 percent of women considering law school identify cost and debt as factors that might prevent them from pursuing a legal education.³¹ A somewhat lower percentage of men (60 percent) cite those factors.³²

Second, women are more likely than men to perceive law school as "too hard" and as an environment in which they "would not do well academically." Among college students considering law school, 29 percent of women identify this fear as a deterrent to enrolling in law school; just 20 percent of men do so.³³

28. These calculations used data from *id.*

29. Deborah Jones Merritt & Kyle McEntee, *Unpublished Research Summary: The Leaky Pipeline for Women Entering the Legal Profession*, LST RADIO (Nov. 2016), https://www.lstradio.com/women/documents/MerrittAndMcEnteeResearchSummary_Nov-2016.pdf.

30. See *supra* notes 4-7 and accompanying text.

31. *BEFORE THE JD*, *supra* note 12, at 50.

32. *Id.*

33. *Id.*

Third, women worry more than men about achieving a suitable work/life balance in the legal profession. Similar percentages of college men and women identify a “poor work-life balance in law jobs” as a factor that might prevent them from attending law school,³⁴ but women place greater weight on that concern. Eighty-six percent of women considering law school, compared with 78 percent of men, name “ability to have work-life balance” as a key factor in assessing career options.³⁵

College women, finally, voice somewhat different career aspirations than their male counterparts. Similar percentages of men and women considering law school cite “career advancement,” the “potential to earn a lot of money,” and “opportunities to be original and creative/innovative” as important factors when choosing a career.³⁶ The groups diverge, however, on other factors they favor. Women care more about “opportunities to be helpful to others or useful to society/giving back,” and being an “advocate for social change.”³⁷ Men are more likely to stress “whether the job has high prestige/status,” the “ability to be entrepreneurial,” and the “ability to work with or develop cutting-edge technology in my job.”³⁸

A legal career can further all of these goals, but applicants have learned that the most lucrative—and prestigious—law jobs cluster in corporate law firms. Lawyers who help individuals, give back to society, and advocate for change receive less pay and recognition.³⁹ When potential applicants weigh the high cost of law school against their career aspirations, the mix of costs and potential rewards may be more appealing to men than women. The differences are small, but may be sufficient to explain women’s preference for other graduate programs.

Admissions

The Law School Admission Council (LSAC) reports the total number of law school applicants and admitted students by gender; the American Bar Association and individual law schools similarly tally enrolled students by gender. These organizations, however, do not publish other statistics (such as LSAT scores or scholarship offers) by gender. It is difficult, therefore, to determine why law schools admit a higher percentage of men than women each year.

34. *Id.* About half of both men (50 percent) and women (51 percent) noted this concern.

35. *Id.* at 30.

36. *Id.* 93 percent of men and 92 percent of women cited potential for career advancement; 71 percent of men and 69 percent of women cared about the potential to earn a lot of money; 64 percent of men and 65 percent of women identified an interest in creativity and innovation.

37. *Id.*

38. *Id.*

39. These pay and status divisions are longstanding in the legal profession. For a thorough discussion of the issue, see JOHN P. HEINZ, ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005).

The gap could reflect perceived weaknesses in the pool of women applicants by law school admissions committees. That is, the women who apply to law school may have lower LSAT scores; weaker college transcripts; and less impressive personal statements, letters of recommendation, and extracurricular activities than the men who apply. No study has examined the overall strength of applications from men and women to law school, so we cannot evaluate this hypothesis.

Existing research, however, suggests that women outshine men on at least one criterion weighted heavily in law school admissions: Women applicants, as a group, have better college grades than men.⁴⁰ The gender gap in admissions, therefore, is unlikely to reflect an across-the-board weakness in women who apply.

Instead, the gap likely arises from the fact that men tend to outperform women on the LSAT,⁴¹ and that many law schools weight LSAT scores more heavily than college grades when making admission decisions.⁴² The gender difference in LSAT scores could explain all—or at least part of—the admissions gap we detected. As we discuss further below, however, this is not a gender-neutral explanation. Law schools consciously emphasize the LSAT (which they know favors men) over college grades (which they know favor women), creating a systemic bias against women.⁴³

40. STEPHEN P. KLEIN & ROGER BOLUS, ANALYSIS OF JULY 2004 TEXAS BAR EXAM RESULTS BY GENDER AND RACIAL/ETHNIC GROUP at Table 1a (2004), <https://ble.texas.gov/statistics>; Colleen Honigsberg, *Closing the LSAT Gender Gap*, DAILY PENNSYLVANIAN (Jan. 17, 2008), https://www.thedp.com/article/2008/01/colleen_honigsberg_closing_the_lsat_gender_gap; Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 320-22 (2000). See also R.E. O'Dea et al., *Gender Differences in Individual Variation in Academic Grades Fail to Fit Expected Patterns for STEM*, NATURE COMMUNICATIONS (Sept. 25, 2018), <https://www.nature.com/articles/s41467-018-06292-0> (discussing how women earn higher grades than men in all subjects and throughout their schooling).
41. LAW SCH. ADMISSION COUNCIL, TECHNICAL REPORT 14-02, SUSAN P. DALESSANDRO ET AL., LSAT PERFORMANCE WITH REGIONAL, GENDER, AND RACIAL/ETHNIC BREAKDOWNS: 2007-2008 THROUGH 2013-2014 TESTING YEARS 19-20 (2014), <https://perma.cc/2AA6-RS8R> [hereinafter LSAT PERFORMANCE]; KLEIN & BOLUS, *supra* note 40.
42. See, e.g., Pamela Edwards, *The Shell Game: Who Is Responsible for the Overuse of the LSAT in Law School Admissions?*, 80 ST. JOHN'S L. REV. 153, 156 (2006); William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and Its Relationship to Racial Diversity in Legal Education*, 12 YALE J. LAW & FEMINISM 1, 6 (2000); Aaron N. Taylor, *Robin Hood, In Reverse: How Law School Scholarships Compound Inequality*, 47 J. L. & EDUC. 41, 55-58 (2018).
43. See *infra* notes 57-59 and accompanying text. The gender gap in admissions could also stem from other components of applicant files. It is possible that men present stronger personal statements, letters of recommendation, and/or portfolios of extracurricular activities. Alternatively, application readers may rate these components of files from men more favorably than they rate similar components of files from women; unconscious bias can affect admissions decisions. Researchers have not probed either the objective quality of these application components or the existence of unconscious bias, so it is impossible to determine whether these aspects of the admissions process contribute to a gender gap. Law

Prestige

The underrepresentation of women J.D. students at the most prestigious law schools likely stems from multiple sources. Factors that contribute to the admissions gap could explain the prestige gap as well. Schools that weight LSAT scores more heavily than college grades are likely to admit more men than women, giving women fewer offers from higher-ranked (and more selective) law schools. Application readers may unconsciously rate men more highly than women on personal statements, letters of recommendation, and other subjective portions of applications. Any of these factors could relegate women to less prestigious law schools, just as they deny women admission.

Two other factors, however, may contribute to the uneven distribution of men and women among law schools. First, men may receive larger tuition discounts than women. Law schools today engage in widespread price discrimination, providing discounts to a majority of their students.⁴⁴ The size of these discounts varies widely, even within the same school.⁴⁵ Some of the discounts address student need, but most reflect the student's attractiveness to the school and, in some cases, the student's success in negotiating with the admissions office.⁴⁶

Law schools release very little information about the discounts they award. It is common, however, for schools to tie discounts to LSAT scores—hoping that students with higher scores will improve their *U.S. News* ranking.⁴⁷ This emphasis on LSAT scores may produce higher discount offers for men than women. Men may also be more successful than women in negotiating for higher discounts after receiving an initial offer.⁴⁸ If either of these practices occurs, men will have the chance to attend more prestigious schools at lower cost than women—increasing their enrollment at those schools.

schools, however, weigh LSAT scores and college grades much more heavily than any of these other factors.

44. Deborah Jones Merritt & Andrew Lloyd Merritt, *Agreements to Improve Student Aid: An Antitrust Perspective*, 67 J. LEGAL EDUC. 17, 17 (2017).
45. *Id.*
46. *Id.* at 17–18; William C. Whitford, *Law School-Administered Financial Aid: The Good News and the Bad News*, 67 J. LEGAL EDUC. 4 (2017).
47. See LSSSE, LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUITY 9, 11 (2016), <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>; Merritt & Merritt, *supra* note 44, at 17–18; Taylor, *supra* note 26, at 58, 71–73; Whitford, *supra* note 46, at 7–9.
48. Researchers have not studied gender differences in negotiations for law school discounts, but research in other fields establishes that women are less comfortable than men when negotiating for their own financial advantage. See, e.g., LINDA BABCOCK & SARA LASCHEVER, WOMEN DON'T ASK: THE HIGH COST OF AVOIDING NEGOTIATION—AND POSITIVE STRATEGIES FOR CHANGE (2007); Emma Holliday et al., *Gender Differences in Resources and Negotiation Among Highly Motivated Physician-Scientists*, 30 J. GEN. INTERNAL MED. 401 (2015) (discussing negotiation differences in another field between men and women).

Second, even when men and women secure identical tuition discounts, women may be more likely to attend a lower-ranked school that offers a larger discount. As noted above, women worry more about the cost of law school than men do.⁴⁹ Conversely, they care less than men about obtaining a prestigious job; instead, they stress helping others and advocating for change.⁵⁰ Women may conclude that attending a lower-ranked school for a substantial discount better serves their interests than paying full price to attend a higher-ranked school.

If the latter scenario is true, then women “choose” to attend lower-ranked law schools; they are not prevented from enrolling at more prestigious institutions. These choices, however, are shaped by systemic practices that favor men. When making admission decisions and awarding tuition discounts, schools appear to place more weight on LSAT scores (a credential that favors men) than college grades (one that favors women). They also modify discounts through private negotiations that are more comfortable for men than women. The gender gap in law school enrollment does not stem from women’s context-free preferences; it appears to reflect a series of systemic factors that attract and favor a larger percentage of men than women.⁵¹

Remedies

How can law schools achieve greater gender equity in enrollment? The first, critical step is to recognize that the problem exists. Most law schools admit classes with a roughly equal number of men and women. This surface equality masks underlying inequity: Women are less likely than men to apply to law school, they are less likely to secure admission if they do apply, and they attend less prestigious schools when they are admitted. The gender disparities that dog the legal profession begin in the prelaw years.

The second key step is to gather—and publish—more data related to gender differences. Law schools and the ABA gather large amounts of data sorted by

49. See *supra* note notes 31-32 and accompanying text.

50. See *supra* note notes 37-38 and accompanying text.

51. It is theoretically possible that the correlation between the number of women enrolled and the law school’s ranking reflects employment choices made by graduates who are women. If those graduates prefer part-time jobs, temporary ones, or jobs that do not require bar admission, then those employment choices would affect a school’s employment outcomes—and, potentially, its ranking in *U.S. News*. This scenario, however, is highly unlikely. Statistics compiled by the National Association of Law Placement (NALP) show that women are as likely as men to take jobs requiring bar admission. See, e.g., NALP, JOBS & JDs: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2015, at 61 (66.4 percent of women and 67.0 percent of men secured jobs that required bar admission). Very small numbers of men or women take part-time or short-term positions. The most recent data, for the Class of 2019, show that only 3.7 percent of graduates took jobs that were part-time, short-term, or both. ABA Sect. of Legal Educ. & Admissions to the Bar, Employment Outcomes as of April 2020 (Class of 2019 Graduates), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2019-law-graduate-employment-data.pdf.

gender, but publish very few reports categorized in that manner. It would be easy to make more gender-specific data available to applicants and researchers. Law schools, for example, should begin reporting LSAT and undergraduate grade-point averages (UGPAs) of their applicants and admitted students by gender; they should also report initial scholarship offers and final tuition discounts by gender. The ABA should require law schools to gather and report those data—and should publish the information on its public website.⁵² Only with data like these can we trace the factors producing the gender gap.⁵³

When collecting and reporting that information, stakeholders should be sure to include categories other than “men” and “women.” LSAC reports that test takers who decline to identify their gender obtain higher LSAT scores, on average, than either men or women.⁵⁴ As we probe gender-based differences, it is important to look beyond just men and women. Similarly, stakeholders should complement gender-based data with more detailed data about race/ethnicity. Educational and career experiences vary by both gender and race, with nonwhite women reporting different outcomes than white women.

Third, law schools should explore why women are more likely than men to perceive law school as “too hard” academically. Women outperform men in college: Why do they believe that law school will be different? Does the Socratic method discourage some women from applying to law school? Do they worry more than men about the lack of feedback in legal education?⁵⁵ Do women seek smaller classes or more hands-on opportunities to serve clients?⁵⁶ Understanding the academic fears that women hold would help law schools assuage those fears or better align their programs with the needs of women.

52. ABA Section of Legal Educ. & Admissions to the Bar, *Statistics: ABA Required Disclosures*, https://www.americanbar.org/groups/legal_education/resources/statistics/.
53. Law School Transparency (LST) created a detailed proposal for release of similar information, and submitted that proposal to the ABA Section of Legal Education and Admissions to the Bar in late 2018. The LST proposal has been endorsed by many state bar associations, as well as the ABA Young Lawyers Division and the ABA Law Student Division. As of late 2020, shortly prior to publication, the Section of Legal Education is considering these changes, which would expand gender and racial data across several categories discussed through this article. These proposals are outlined in Kyle McEntee, *More Transparency, Please*, 13 FIU L. Rev. 465 (2019).
54. LSAT PERFORMANCE, *supra* note 41, at 19.
55. See, e.g., Ruth Colker et al., *Formative Assessments: A Law School Case Study*, 94 U. DETROIT MERCY L. REV. 387 (2017) (women law students were significantly more likely than men to complete an optional exercise that offered feedback).
56. See, e.g., Daniel E. Ho & Mark G. Kelman, *Does Class Size Affect the Gender Gap? A Natural Experiment in Law*, 43 J. OF LEGAL STUD. 291 (2014) (reducing class sizes at Stanford Law School narrowed a persistent gender gap in law school grades; adding simulation courses closed the gap entirely).

Fourth, law schools should rethink their emphasis on LSAT scores in admissions and financial aid. Many schools point to the *U.S. News* rankings as a reason for stressing LSAT scores over college grades;⁵⁷ *U.S. News* accords slightly more weight to the former than the latter.⁵⁸ This rationale, however, reflects a simplistic view of how *U.S. News* calculates ranking. When calculated to two percentage points, UGPAs exhibit more variance than LSAT scores. It would be easier, therefore, for some schools to boost their *U.S. News* ranking by admitting students with high UGPAs than by attempting to boost their median LSAT.⁵⁹ It is also disturbing for schools to favor a credential that benefits men over a similar credential that benefits women. Why not weight both LSAT and UGPA equally in admissions?

Fifth, law schools should reflect on the gender impact of their high costs and tuition discounting practices. Women care more than men about the cost of graduate education;⁶⁰ the staggering rise in the cost of legal education probably deters more women than men from entering law school. Women's concern about cost, moreover, is rational: Women lawyers earn far less than men during their careers.⁶¹ The cost-benefit calculus for women, therefore, differs from that for men.

Law schools compound this gender difference through price discrimination. Since women care more than men about educational costs, while men care more about prestige, price discrimination helps men attend more highly ranked schools while channeling women to lower-ranked ones. If men obtain higher discounts than women—based on their higher LSAT scores, greater willingness to negotiate, or other gender-skewed factors—then the gender effects of this system raise even greater concerns. Law schools could achieve more gender equity by shifting tuition discounts to need-based scholarships or postgraduate stipends for graduates taking low-paying positions.⁶²

Finally, law schools and the ABA should engage the full profession in critically examining the aspects of our profession that push women from our ranks. The gender imbalance we identified in law school enrollment pales in comparison with the gender imbalances in practice. At every stage of their careers, women obtain fewer rewards than men and are more likely to leave the profession.⁶³ The legal profession's poor work-life balance impairs the lives of

57. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 71-103 (2012); Edwards, *supra* note 42.

58. Robert Morse et al., *Methodology: 2020 Best Law Schools Ranking*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (median LSAT score counts for 12.5 percent of a school's rank; median UGPA counts for 10 percent).

59. Cf. TAMANAHA, *supra* note 57, at 83 (noting that one school developed a calculator to predict whether gains in median LSAT scores or UGPA would better boost its rank).

60. See *supra* notes 31-32 and accompanying text.

61. NAWL REPORT, *supra* note 10, at 3-4, 10-11, 12-13.

62. For discussion of the latter option, see Whitford, *supra* note 46, at 11-12.

63. See *supra* note 10.

all attorneys, but it affects women more than men.⁶⁴ The profession's unhealthy emphasis on pay and prestige reduces job satisfaction for many lawyers⁶⁵ but, once again, this occupational focus may affect women more negatively than men. Women who value service to others more than pay or prestige may find the legal profession a poor fit.

The United States faces a dire crisis in providing access to justice.⁶⁶ To meet the needs of low- and middle-income individuals, as well as small businesses and nonprofits, we need the efforts of every talented lawyer we educate. We also need to offer more support and emotional rewards to the lawyers who serve individuals and small businesses. Those lawyers may never earn as much money as peers who serve large companies, but we can offer more equal status to both groups. Doing so would both improve access to justice and address some of the gender gaps we experience in our profession.

Conclusion

Women make up more than half of all J.D. students nationwide, but those numbers mask persistent gender gaps. Women are still less likely than men to apply to law school, less likely to gain admission when they do apply, and less likely to attend the most prestigious schools after admission. These gaps presage disparities that grow as men and women advance through their legal careers. Assuring full equity for women in law school enrollment is the first step toward achieving full gender equity throughout the legal profession.

64. See, e.g., Claire Cain Miller, *Women Did Everything Right. Then Work Got 'Greedy,'* N.Y. TIMES, Apr. 26, 2019, at BU1, <https://www.nytimes.com/2019/04/26/upshot/women-long-hours-greedy-professions.html?searchResultPosition=24>; Susan DeSantis, *Busy Lawyers Are Freezing Their Eggs to Focus on Their Careers*, N.Y. LAW J., Feb. 27, 2019, <https://www.law.com/americanlawyer/2019/02/27/lawyers-increasingly-busy-with-billable-hours-look-to-delay-childbearing-by-freezing-embryos-and-eggs-405-32312/>.

65. See, e.g., Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554 (2015).

66. A recent issue of *Daedalus*, the Journal of the American Academy of Arts and Sciences, highlights this crisis. To promote awareness, the journal made that issue, *Access to Justice* (Vol. 148, No. 1), available free of charge at <https://www.mitpressjournals.org/toc/daed/148/1>.