

Why Is Nobody Talking about Gender Diversity in Public Interest Law?

by Katie Dilks

When the legal profession talks about gender diversity, the conversation generally focuses on one of two issues: the under-representation of women as equity and non-equity partners in large law firms, and the under-representation of women on the bench. While not downplaying the importance of these concerns, I want to take time in this article to address a third area that currently exhibits gender disparities at least as great as in law firm partnerships and the judiciary: public interest law. One reason I believe this arena has been overlooked is because of who the under-represented group is: male lawyers. Fortunately, NALP has the data necessary to investigate this issue; we must simply acknowledge this as an important area of focus.

In the first wave of the *After the JD* study conducted by the NALP Foundation and the American Bar Foundation, 22% of surveyed lawyers were working in a public interest field (broadly defined to include federal, state, or local government, public defender or prosecutor work, civil legal services, academia and nonprofits, and “other public interest”).¹ This was pretty well aligned with the federally collected data included for comparison, which found 25% of all U.S. attorneys were working in these fields.²

However, when one examines how this breaks down by gender, things shift. Twenty-seven percent of the women in the *After the JD* study were in one of these fields, while only 18% of the men were. More strikingly, while the numbers were almost equal for government employment (287 women vs. 269 men), 9% (147) of the women surveyed worked in civil legal services or public defender offices, nonprofits or education, and public interest, while only 4% (71) of the men worked in

these fields.³ The second round of the *After the JD* study found that four years later these numbers had not shifted much — 31% of the female respondents were in public interest fields while 21% of the male respondents were.⁴

The fact that women outnumber men at least two to one in these fields — which are some of the lowest-earning fields in the legal profession — must spark an important discussion of how these jobs are valued and of both why women are disproportionately drawn to them as well as why men avoid them. However, when I started looking into this area, I could find only two articles written recently that addressed this concern, and both of those were more directly concerned with the issue of low salaries for public interest work (specifically in civil legal services).

John Tobin, Executive Director of New Hampshire Legal Assistance, wrote in 2003, “Legal services salaries are so low that many legal services staff are de facto subsidized by a spouse/partner, and a divorce/breakup can make the legal services person’s financial situation untenable. Legal services staffs are becoming disproportionately female. We must ask ourselves what role we are unwittingly playing in a culture that conditions women to work for less.”⁵

In a similar article four years later, Catherine Carr, Executive Director of Community Legal Services in Philadelphia, wrote, “I do worry that perhaps their [female legal services lawyers] male counterparts are staying away because they will not accept our salaries. I am alarmed at the possibility that legal services managers and boards are creating our own low paid ‘pink collar’ workplace...”⁶

Though there are organizations that might have the capacity to investigate this issue, it remains out of the national spotlight. The ABA Commission on the Status of Women in the Profession, for example, publishes an annual summary of women in the legal profession. However, they only look at women in private practice, corporations, law schools, and the judiciary. By not including information on women in government and public interest, they are effectively ignoring a quarter of the population they attempt to represent.

Similarly, the Center for Women in Law at the University of Texas is focused on leadership roles for women in the legal profession. Yet at their inaugural conference last year, the vast majority of speakers were from law firm, corporate, academic, or judicial backgrounds. Only two came from a public service practice background (and one of those was former Supreme Court Justice Sandra Day O'Connor, hardly there to discuss her time as Assistant Attorney General of Arizona). This is not to lay blame on either of these organizations, both of which are engaging in critical work, but to highlight the extent to which the gender disparity in public interest law simply isn't a current part of the national conversation.

The under-representation of men in public interest law furthers the gender disparity which persists in earnings, and is typically reported across the profession. Everyone knows the 77% statistic (nationwide across all professions, women are generally reported to earn 77% of what men do⁷). According to the Current Population Survey from the Bureau of Labor Statistics, the median weekly earnings in 2009 for male lawyers was \$1,941 while for female lawyers it was \$1,449, or 75% of the male earnings. This is not just because women earn less than men in the same work settings (though they generally do, with the exception of legal services, education, and government⁸), but because there are more women in lower-earning practice settings, as well as more women working part-time.

The legal profession claims to value these jobs which are paid least. However, until we come together to have the hard conversations on what this gender disparity and attendant salary gap really

mean about how we truly value these positions, this remains empty lip service. Significant research has been done on similar issues in teaching⁹ and medicine,¹⁰ and it is time to make this issue a priority in our profession as well. Until we truly understand the drivers and motivations behind the gender gap, the legal profession, and particularly the legal career field, cannot take informed steps to move toward a more just and equal distribution. In Catherine Carr's article, she asks (regarding low-paid legal services attorneys): "Do we think they are worth less than other attorneys?" This question is important regardless of who is working in these fields, but in the face of such a persistently uneven distribution, we must ask ourselves, do we think women lawyers are worth less than other attorneys? If the answer to that question is no, we must start an open and in-depth conversation on this issue today.

Endnotes

- 1 *After the JD: First Results of a National Study of Legal Careers*, 27, NALP Foundation, 2004.
- 2 *Id.*
- 3 *Id.* at 59.
- 4 *After the JD II: Second Results from a National Study of Legal Careers*, 62, NALP Foundation, 2009.
- 5 Tobin, John, "Urgent Memo to Ourselves: Legal Services Is Not the Peace Corps (Addressing the Salary Chasm Now)," *Management Information Exchange Journal*, 6, 2003.
- 6 Carr, Catherine, "Fairness and Justice in Setting Legal Services Attorney Salaries: Finding the Will to Get There," *Management Information Exchange Journal*, 21, 2007.
- 7 <http://www.eeoc.gov/eeoc/newsroom/equalpayday2010.cfm>.
- 8 *AJD2*, page 67.
- 9 See, e.g., Sandra Acker, "Gender and Teachers' Work," *Review of Research in Education*, 1996.
- 10 Female physicians earn 63 cents for every male doctor dollar, and certain lower-paid specialties such as pediatrics and obstetrics/gynecology have become heavily female-dominated. See James DiClerico, "Gender Gap Persists in Physician Income, Dartmouth Medicine, Winter 2006 (http://dartmed.dartmouth.edu/winter06/html/disc_gender.php).

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