

Reflections on the Birth of the *Journal*: *A Founders' Roundtable Discussion*

I. INTRODUCTION

Over twenty years ago, a small group of idealistic law students banded together to make a difference. Their resolve was to create a new law journal from scratch — but one that had a voice that was not often heard behind the law school walls. Through numerous gatherings and discussions, a vision for a unique journal grew into fruition. The journal would focus on and explore issues concerning the wide diversity among women, due to differences such as race, social status, sexual orientation, and physical and mental abilities. These were issues that were somehow deemed “unimportant” in the law school curriculum. With this mission in mind, the *Berkeley Women's Law Journal* was born.

We now embrace this opportunity to celebrate the twentieth issue of the *Journal* in the year of 2005! Like proud mothers we fuss over our creation and marvel at how much it has grown. We understand that the *Journal* is not a static object, but an evolving movement, populated by generations of students who believe that the *Journal's* mission speaks to them in a special way. It's wholly appropriate that, on the 20th Anniversary of its founding, the current board went through a process to re-examine the identity of the *Journal*. After all, while names are important symbols of identity, it is what we do that truly defines who we are, and there is every reason to believe that the *Journal* will continue to do what it does so well. To that end, we wish it the best of institutional support, as well as the diversity of student body. In this way, we know that the *Journal* will continue to have a pool of talent, plus a certain amount of rebelliousness, that fuels great thinking.

On this twentieth anniversary, we also hope that our original dream for the *Journal* continues to be a beacon of light for its mandate. Why is it important not to forget the principles that the *Journal* has attempted to portray over the years? Perhaps it is because the emphasis on rationality, elevated above all else in traditional legal education,¹ trains students away from compassion. And it is compassion — for those less fortunate or less free — that shapes a lawyer's reasoning into an act of justice and mercy:

The quality of mercy is not strain'd,

1. See, e.g., Angela P. Harris and Marjorie M. Shultz, “A(nother) Critique of Pure Reason”: Toward Civic Virtue in Legal Education, 45 STAN. L. REV. 1773 (1993).

It droppeth as the gentle rain from heaven
 Upon the place beneath: it is twice blest;
 It blesseth him that gives, and him that takes:
 'Tis mightiest in the mightiest . . .²

As people who have the privilege to serve as lawyers, we are among “the mightiest.” May we gather inspiration from Portia, and always work to make sure that “mercy seasons justice.”³ Whatever its name may be twenty years hence, we hope the *Journal* continues to speak for those who so badly need a voice to represent them.

For this twentieth anniversary, the core group of founders once again banded together to speak and write. We have spread out to all vocations,⁴ each of us taking a thread from this *Journal* and weaving it into our own work. We rejoice at seeing one another again and celebrate this issue! For this special project, we posed a set of questions to each other and bounced off of one another’s words, experiences, and memories. Below, we transcribe some of the discussions we had about our memories of *BWLJ*, while drinking good wine and feasting on chicken with dried fruit.

Happy Birthday *Berkeley Women’s Law Journal*!

II. ROUNDTABLE DISCUSSION

1. How did the *Berkeley Women’s Law Journal* get started, and how did you come to be involved?

KAREN SCHRYVER: The birth of the *Berkeley Women’s Law Journal* was a creative necessity for me. If students think the atmosphere at Boalt Hall is conservative now, they should have experienced it twenty years ago. Fortunately, back then, the Women’s Center was a place to go and meet other women who were willing to reach out and share their experiences and wisdom with others. As it turned out, each of us was so talented and creative in our own way, it seemed a waste not to combine our forces and create a voice of our own. That was my vision – to provide a journal where intelligent, wonderfully dynamic law students could express the voices of underrepresented women in a way that was not really possible within the regular law school curriculum that was presented to us at that time.

HELEN KANG: A flyer spoke to me from the law school hallways. It spoke to me because I needed to engage in a law school endeavor that had some connection to my motivation for attending law school in the first place, which were small things like changing the world, a just world for everyone, and a few

2. WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*, act IV, sc. i.

3. *Id.*

4. See biographies of the founding members contributing to the roundtable discussion, immediately following the article.

other things.

SHEILA O'ROURKE: My memory is of reflecting on the *Harvard Women's Law Journal* and thinking, we could do this. I don't remember how we gained momentum, but I remember holding one of the very first meetings of women interested in getting the journal started in my living room during my first year. The room was packed. I also remember that my grades were terrible that semester, and after finals were over, I wondered if I should have spent more time studying and less time organizing! From the beginning we were committed to a journal that addressed issues of interest to groups under-served by traditional academic journals. This was the unique contribution we felt we could make. The atmosphere at Boalt was dreadful for women during those years. It was when two fabulous female law professors at Boalt were fighting for tenure. We knew it was wrong for them to have to fight so, and indeed, they ultimately prevailed. It was also in the years leading up to Rose Bird's ouster from the California Supreme Court. The room on the west side of the building was our refuge. One student asked, "Why is there a Women's Center at Boalt and not a Men's Center?" We answered: "All of Boalt is a Men's Center."

DONNA RYU: While a number of us responded to the call to found the journal, the person who started the effort, and the person upon whom much praise and kudos should now be lavished, is Karen Schryver. We all learned so much from Karen, who was a steady source of wisdom, strength, ingenuity, and the ability to keep us moving forward. Simply put, without Karen, there would be no *BWLJ*.

My decision to join the *BWLJ* founding effort was very personal. I felt alienated from my daily law school experience. Prior to the official start of school, I participated in a week-long orientation for people of color and other underrepresented students. When it was over, I remember being very excited about spending the next three years with such dynamic, interesting and smart people. Over the course of that first semester, I became increasingly discouraged as I noticed that none of my colleagues of color in my classes felt comfortable raising their hands and voicing their thoughts and opinions; they only spoke when called upon to do so. Classes and interactions with some of my classmates seemed filled with reminders of how I didn't fit in. With *BWLJ*, I immediately felt that I had a seat at the table, and that my contributions were respected and appreciated by my sisters on the journal. As it turned out, we decided to focus our efforts on the concerns of underrepresented women – proof positive that I had a home in the *BWLJ* community! These days, I advise my students about the importance of finding something to make their experience meaningful, something to make the law real for them, to help them stay connected. *BWLJ* played that role for me. It was how I survived law school.

CATHERINE FISK: Why we felt compelled to do it and why I got involved had a lot to do with the atmosphere at Boalt in 1984-85. By the end of my first year in law school in the spring of 1984, I felt quite oppressed. I hadn't found the coursework as interesting as I had found my courses in college; I

thought the emphasis on manipulating doctrine in the classroom was tedious; and I thought the competitive atmosphere over grades and law review membership among students was irritating. In addition, like many students entering law school at Berkeley, I had expected the faculty to be a good deal more politically progressive, and more interested in critical legal studies, than many of them seemed to be. So, I simultaneously found my first year of law school to be less intellectually engaging and less focused on interesting uses of law to effect social change than I had hoped. Given that, I was uninterested in participating in the write-on competition to get on the *California Law Review*, but I also was looking for an intellectual community that cared about social change. The group of women who founded *BWLJ* became that community. I can't speak for others as to whether the things that animated me were the things that prompted the founding of the journal, but I suspect that they were. I was and remain very grateful to the group of women who took the lead in founding the journal and who let me play a part. They made a huge difference in my life.

In addition – and this may have been something that I felt more than others – I found the plight of women faculty – both at my undergraduate institution (Princeton) and at Boalt – to be discouraging. I wanted to be a professor, and I kept gravitating to women professors, but many of them seemed embattled. Women who appeared far smarter and more accomplished than I ever could hope to be seemed to me to be either struggling within their institutions or extremely cautious and conservative. I felt that feminism had such a long way to go, and helping to found the journal seemed to be one small contribution I could make to changing the world and to changing the role of women in academia.

ANN VAN DE POL: If this sounds like a paean to my dear friend, Karen Schryver, it is in fact precisely that. I waddled into Boalt in the ninth month of my pregnancy with my son Owen, having completed a Ph.D. in sociology at U.C. Berkeley just a few weeks before Boalt started. While in sociology in 1983 gender studies and women's issues had achieved a significant level of acceptance and were relatively well developed intellectually, I was shocked and dismayed at how undeveloped and unincorporated women's issues were at Boalt, both institutionally and as a matter of legal scholarship relative to the "lower campus."

One of the few people who thought I was something less than mad for trying to combine law school with parenthood was Karen Schryver, who befriended me as I grappled with whether or not I should just simply drop out. I continued, and through the sleep-deprived haze of that first year, one prominent memory is of Karen with her file folders and post-its (she introduced me to the virtues of these "modern" items), as she seemed to create a journal for women and the law out of what seemed to me to be whole-cloth. Karen's hard work, doggedness and ingenuity initially spawned the journal from my limited view. As I attended law school half-time that first year (thanks to the near divine intervention of Dean Herma Hill Kay), I became increasingly aware of the many other wonderful women congregating around the journal. It was a place of

refuge in an institution filled with individuals consumed with ambition and obsessive pre-occupation with academic success (when neither of these goals was of any interest to me at that time). As I remember, there were only two women out of the forty tenured faculty members there, and Marge Shultz had been denied tenure her first go around. Eleanor Swift was to receive the same treatment a few years later. I believe that Boalt has slowly changed over the years, thanks to the efforts of women professors who persevered, such as Professors Shultz and Swift, who were eventually tenured. Also, credit is due to the many students who followed and worked for institutional change.

The journal was the only repository of feminism in an institution that otherwise seemed more hostile than encouraging to the study and advancement of women and the law. The interdisciplinary approach of the journal is one of its strongest attributes and its receptivity to new and perhaps less conventional approaches to feminist jurisprudence gives it a distinctive quality. The work on the journal was far more scintillating than anything else I found in law school, where the class work was truly rote and mind-numbing and discussion of policy issues virtually nonexistent.

DORENE GIACOPINI: During the summer before law school, I heard from a friend that there was to be a week-long orientation for “minority students” before classes started. I ultimately realized that I wasn’t invited to this event because disabled women were totally off the radar screen in law school. I barely realized that I was a member of an underrepresented group of women! But having learned some self-advocacy skills, I asked if I could attend, and I did attend. I thoroughly enjoyed that week; there were a wide variety of fascinating people there, including Willie Fletcher, who was there to offer law school guidance. Having had that experience, the reality of law school hit me like a ton of bricks. I remember feeling disappointed by the prevailing corporate attitude at Boalt; I had expected much more from “Berkeley.” I found my classes to be mind-numbing rather than broadening. I was bored. Luckily I had made several wonderful friends during that week, some of whom became involved in developing the journal. Helen and Donna talked about the journal a lot – it sounded like a little oasis within the law school where something that I could actually care about was happening. I hesitated, realizing very early on that legal research and writing didn’t float my boat. But they were excited about it; they felt it was important, and they seemed to be enjoying the challenge. Once I got in the door, Karen got a hold of me and there was no turning back: “You don’t like research and writing? Fine, manage the journal.”

JUNE BELTRAN: My memory is that while walking down the hallway in Boalt one day, Donna grabbed my arm and asked me if I wanted to become involved in a new women’s journal a group of friends was starting. Not only would it be interesting and fun, (I was on a break from studying tax law in the library, and she must have sensed I was looking for something interesting and fun to do), but it involved a visual, creative element – they needed someone to help design the look of the journal and a logo. I had already been doing graphic

design work for *Ecology Law Quarterly*, so was thrilled about the idea of designing a logo from scratch for a journal that my friends were starting. I also loved the idea of pioneering a journal focused on issues about women of color.

2. What challenges did you face in the process of founding the *Journal*?

HELEN KANG: We had to arrive at a consensus on what aspects of feminist legal scholarship the *Journal* would focus on. The questions ranged from whether we should restrict our publication to scholarship dealing solely with traditional feminist scholarship to whether we should focus more on scholarship on underrepresented women. We overcame this challenge through a successful – if long and agonizing – meeting, without splintering into counter-productive factions. Not so coincidentally, similar debates were happening in national and global settings in other disciplines, even though I did not know that at the time. For example, in the 1980s, communities of color were challenging traditional environmental organizations for their failure to address race and class in the environmental movement.

Another challenge we faced at the *Journal* at its founding was fostering scholarship in the area we chose as a focus for the *Journal*. Many of the potential writers we knew were working more than full time, litigating cutting-edge issues, not writing about them. Professor Nancy Lemon, for example, whose article I edited for the *Journal*, was not on the faculty at Boalt then, and was an advocate with tremendous knowledge. I think it must have been a tremendous challenge for her to find the time to write and then to go through multiple edits. I suspect getting pieces from people in the trenches is still a challenge for the *Journal*. The need to encourage scholarship from the people who are close to the problem is still essential today as it was twenty years ago. By the way, I could not help but notice that Professor Lemon continues to inspire scholars and advocates everywhere with her mentorship. She is cited in law journals as having provided generous advice to many writers, and the contribution of people like Professor Lemon who mentor scholarship in that way should also be specially acknowledged.

KAREN SCHRYVER: To our surprise, many lawyers and professors generously supported the creation of *BWLJ*, including our faculty sponsor, Herma Hill Kay. Herma taught us something very important – to focus on our goal, however we envisioned it, and march forward with our plans. Whenever there was an obstacle, she was there to help. The editorial staff volunteered almost immediately. Other Boalt Hall law journal editors took time to share their organization and procedures with us.

Although I was elected to be the first Editor in Chief, it was very important to me that the creation of the first issue be a collaborative effort with everyone who wanted to be a part of *BWLJ*. We did not want to follow the rigid hierarchal structure found so often in established law reviews and the legal profession in general. We met and discussed extensively how the editorial board would be

structured and what our mandate would be. All volunteers were welcome for any position. Our decisions were not final until everyone had a chance to speak and be heard, and a consensus was reached. This process was time-consuming and challenging. In the end, however, it was very rewarding because the first issue – including our mission, the articles chosen, and the cover design – were truly a reflection of all those who participated.

Our biggest challenge was to find manuscripts that met the mandate we had envisioned: a focus on the diverse and underrepresented women in the community. At that time, traditional feminist scholarship was often very theoretical, and not particularly focused on the practical problems that poor women, women of color, lesbians, and disabled women were facing in daily life. I agree with Helen, in that many lawyers and other legal advocates working with the underrepresented are often overworked and not well paid, and they do not have the luxury to take time out to research and publish articles on their work. However, it must be done. Academic research must go hand in hand with legal advocacy.

CATHERINE FISK: There were a number of journals on women and the law, and we thought we needed a focus to distinguish ours from the others, and to justify the creation of another. We rapidly reached a consensus that the niche that desperately needed filling, and that would distinguish us from the *Harvard Women's Law Journal*, which we regarded as our primary competitor, would be the focus on underrepresented women.

We had to convince the administration that there was a need for another journal, and that we could make it work. It took some convincing, but to their credit, they eventually agreed. At the time, Boalt was riddled with disputes, and, in the great Berkeley tradition, student activists were in the thick of them. The fight over Boalt's then-dismal record of granting tenure to women was very intense and bitter in those years, and there was lots of discussion about why there were no critical legal studies faculty. As I recall, the conflict about whether we could found the journal was mercifully brief and mild in comparison to those much more painful struggles.

Having identified the need for a forum, we then discovered that it was not all that easy to find good articles to publish. The lack of scholarship on the issues facing women of color, women in poverty, and other underrepresented women wasn't just a lack of journals. It was a lack of scholars writing in the area.

As to disputes within our own membership, I recall some disputes about whether articles we were considering publishing met our subject-area concerns. There were the expected issues getting the work done to get the issue published on time. There were debates about spelling (which is better, "predominant" or "predominate"?) And then we had wonderful debates about what feminism meant. Most were very earnest and serious, but I do remember one amusing conversation about whether you could like James Bond movies (I do) and still be a feminist.

SHEILA O'ROURKE: There were no doubt many challenges that time has erased all memory of. I do recall difficulty getting faculty to support the mission of the journal. I recall one visiting female faculty member who responded quite blankly that not all women were feminists, and that including feminism in the mission of the journal would exclude too many women.

DONNA RYU: I agree with Helen, Karen, and Catherine that, having gone through the sometimes painful process of defining our mandate, one of our biggest challenges was finding articles that served that mandate. This challenge was echoed in the makeup of our membership. How could we speak for underrepresented women, when our own roster was mostly filled with white women, albeit progressive and open-minded ones? At that time, Boalt was not exactly overrun with women of color. The few were pulled in many different directions with respect to the need for leadership, such as serving on the boards of identity groups and organizations. They did this all in the context of trying to survive in a sometimes hostile learning environment. In fact, the one shameful memory I have of *BWLJ* is that we had to ask a black classmate to pose for our logo, which depicted the faces of three women of color, only two of us actually active on the journal. Although *BWLJ* had two black women associated with the journal during the time we were developing the idea for the logo, neither were able to lend their faces, for reasons I can no longer remember.

On a more positive note, as mentioned by others, getting approval for starting the journal was relatively easy. Herma Hill Kay was absolutely steadfast in her support. She was the quietly central figure that she has been for so many endeavors on behalf of women over the years. It's only in hindsight that I have come to appreciate just how key Herma's support was to *BWLJ*'s relatively painless birth. There were no debates in the administration in which we had to justify ourselves, prove that we were "scholarly" enough, or demonstrate that Boalt's "brain pool" could support another journal. Herma just said "let's do it," and that was that. Similarly, the people we approached to be on our National Advisory Board stepped right up to lend their help and their reputations. It was a powerful feeling, forging connections with women who we admired from afar, who were already out in the world, making a difference.

DORENE GIACOPINI: "Space wars," the process by which journals and other student organizations jockeyed to obtain office space at Boalt Hall, served for me as a metaphor for attitudes about the journal. While I found the administration and other student representatives to be polite and friendly, ultimately actions seemed to reflect a lack of respect and a sense that the journal was frivolous. I'm hoping that the journal's track record and the passing of years have helped to evaporate those sentiments.

3. What impact did you hope *BWLJ* would have in the world, and what impact has *BWLJ* had on you?

KAREN SCHRYVER: Although it was difficult to find and encourage authors to write and publish articles that fulfilled *BWLJ*'s mandate, I strongly believed it was absolutely necessary, because legal scholarship can play a vital role in influencing social change for underrepresented groups. In the first week of 2005, a Westlaw search pulled up over 2000 cites to *BWLJ* in texts, journals and case law. And a closer look shows how the content of some cited *BWLJ* articles is making its way into the legal discourse of the times, and helping to make a difference for the underrepresented in case law.

For instance, in *Hernandez-Montiel v. I.N.S.*,⁵ the court ruled that a Mexican gay man who dressed like a woman, and who suffered past persecution at the hands of the Mexican police, was entitled to asylum and withholding of deportation. The case turned on the legal question of whether Geovanni Hernandez-Montiel was persecuted on account of his membership in a "particular social group."⁶ The government originally denied Mr. Hernandez-Montiel's application because his persecution stemmed from the way he dressed (like a male prostitute), not because he was a homosexual.⁷ The Ninth Circuit disagreed, finding that Mr. Hernandez-Montiel was a member of a group made of gay men with female sexual identities, and was persecuted because of his membership in this "particular social group."⁸ In reaching this decision the Ninth Circuit relied⁹ on (among many others), an article published in *BWLJ* five years earlier.¹⁰

In another case out of Pennsylvania, *Lake v. Arnold*,¹¹ Elizabeth Lake, an illiterate and mentally retarded woman, alleged a deprivation of civil rights when a hospital performed a tubal ligation on her without her informed consent when she was sixteen years old. The lower court dismissed Mrs. Lake's federal claim under 42 U.S.C. § 1985(3) because it determined that handicapped persons were not considered a cognizable class entitled to protection under this section. The Third Circuit reversed, finding that Mrs. Lake's allegations stated a cause of action under both 42 U.S.C. § 1985(3) and § 1983. Since gender was already considered a protected class under section 1985(3), the Third Circuit reasoned that "[w]hen the language and intent of [the] section . . . are examined in light of the relatively recent recognition of current and historic prejudice directed toward

5. 225 F.3d 1084 (9th Cir. 2000).

6. *Id.* at 1091.

7. *Id.* at 1089.

8. *Id.* at 1091.

9. *Id.* at 1093.

10. Naomi Mezey, *Dismantling the Wall: Bisexuality and the Possibility of Sexual Identity Classification Based on Acts*, 10 BERKELEY WOMEN'S L.J. 98, 100-03 (1995) (discussing the relationship of identity and conduct in arguing that "[s]eparating the way we speak of sexual acts and sexual identities is crucial" and arguing that the traditional binary system of heterosexuals and homosexuals is too restrictive).

11. 112 F.3d 682 (3rd Cir. 1997), *as amended* (May 15, 1997).

the handicapped, it is clear that much of our discussion of gender discrimination . . . applies with equal force.”¹² In expanding section 1985(3) protection to the mentally retarded, the Third Circuit stated that it was “influenced by a number of factors which lie outside our own conjecture or analysis,” and that it “could not conclude, in light of statements by Congress and research compiled by academicians, that the mentally retarded are excluded from section 1985(3) protection.”¹³ The Third Circuit noted articles, including one in *BWLJ*,¹⁴ “which point out that the discrimination documented against the handicapped in general has been directed particularly at the mentally retarded in the context of involuntary sterilization.”¹⁵

Additionally, in a recent controversial case out of South Carolina, *State v. McKnight*,¹⁶ Regina McKnight, an indigent African American, was the first woman convicted of homicide-by-child-abuse because she ingested cocaine while pregnant and then gave birth to a stillborn infant. The state supreme court, in a three-to-two decision, affirmed the conviction and sentence of twenty years, (suspended upon service of twelve years). In a brief but forceful dissenting opinion, Justice James E. Moore pointed out that the homicide-by-child-abuse statute was not intended for the prosecution of pregnant women, especially since the punishment is disproportionately greater than another statute that specifically recognizes the unique situation of feticide. South Carolina’s abortion statute “carries a maximum punishment of two years or a \$1000 fine for the intentional killing of a viable fetus by its mother.”¹⁷ Justice Moore stated: “[I]t is for the legislature to determine whether to penalize a pregnant woman’s abuse of her own body because of the potential harm to her fetus. It is not the business of this Court to expand the application of a criminal statute to conduct not clearly within its ambit.”¹⁸ The majority of the court disagreed, stating that if a pregnant woman does not fulfill her duties and obligations to the fetus, “the state must step in to prevent harm to the child.”¹⁹ The court did recognize that some commentators “object to the prosecution of pregnant women as being contrary to public policy and deterring women from seeking appropriate medical care and/or creating incentives for women to seek abortions to avoid prosecution.” An article from *BWLJ* was cited,²⁰ as well as articles representing the court’s

12. *Id.* at 687 (footnote omitted).

13. *Id.* at 687-88.

14. Roberta Cepko, *Involuntary Sterilization of Mentally Disabled Women*, 8 BERKELEY WOMEN’S L.J. 122 (1993).

15. *Lake*, 112 F.3d at 688.

16. 576 S.E. 2d 168 (S.C. Jan. 27, 2003), *cert. denied*, *McKnight v. South Carolina*, 540 U.S. 819 (Oct. 6, 2003) (No. 02-1741).

17. *Id.* at 179.

18. *Id.* at 180.

19. *Id.* at 175 n.5.

20. Tara-Nicholle B. DeLouth, *Pregnant Drug Addicts As Child Abusers: A South Carolina Ruling*, 14 BERKELEY WOMEN’S L.J. 96 (1999).

opposing viewpoint.²¹ It is now uncertain whether the court's decision can be expanded to permit prosecution of *any woman* whose behavior, legal or not, can be characterized as the cause of a stillbirth. Whether or how to prosecute pregnant women who, knowingly or not, commit feticide is clearly a current public policy debate in great need of input from researchers who are willing to represent the voices of pregnant women who experience stillbirths.

HELEN KANG: We wanted the journal to grow to be widely respected, cited and emulated because we wanted it to be influential – so that it could improve the lot of women. The aspiration was interesting because most of us did not judge success by traditional measures, and yet we wanted the journal to be respected by the mainstream. Rather than talk about what impact the journal had on me, I want to talk about my hope today for the journal, which is sadly too modest and ambitious at the same time. I would like to see the journal continue to contribute to reversing the dangerous trends that we see today. We are going away from voter enfranchisement, protection of privacy rights, meaningful public participation in government decision-making, and so on. There is a heightened need for the journal to bring light to these issues.

DONNA RYU: At the time, I joined others in expressing the hope that the journal would impact the lives of underrepresented women by effectuating positive changes in the law. But truthfully, I was too young and inexperienced to really appreciate what that meant. I think the moment it became real for me didn't arrive until after I had graduated, when I discovered that a court had become the first to cite an article from the journal. If my research skills are still up to snuff, that occurred in *Mitchell v. Hutchings*,²² citing Linda Krieger and Cindy Fox's article entitled, *Evidentiary Issues in Sexual Harassment Litigation*.²³ In *Hutchings*, the court granted the sexual harassment plaintiffs' request for a protective order to prevent defendants from conducting highly intrusive and irrelevant discovery regarding plaintiffs' sexual activity. I remember calling Robin²⁴ and saying, "Wow, so that's why we wanted to create the journal!"

The journal had a big impact on my life. As mentioned before, it's what got me through law school, and gave me the confidence to know that I could be a strong lawyer who could make tangible and positive contributions to my community. *BWLJ* also fostered some of my most enduring and important friendships. For example, my daughter considers Robin and Helen to be part of our family. One of the best parts of coming up with this article was having a great excuse to invite my journal comrades over for dinner to reminisce! I am really proud of who each of us has become. My *BWLJ* experience reminds me of how positive impact on the world can come both through our daily

21. *McKnight*, 576 S.E. 2d at 175 n.5.

22. 116 F.R.D. 481 (D. Utah 1987).

23. 1 BERKELEY WOMEN'S L.J. 115 (1985).

24. Robin Lipetzky is another early founding member of *BWLJ*.

interactions with others, as well as our longer-term strivings.

ANNA BANNERMAN-RICHTER: It was quite empowering for me as an African-born woman to experience the birth of a journal dedicated to issues relevant to women of color. I was also inspired by the enduring cooperation of women from diverse backgrounds, and with seemingly divergent interests, who managed to keep their “eyes on the prize” through the many frustrating setbacks and delays that could be expected to attend the delivery of the inaugural issue.

My hope is that *BWLJ* can expand its mandate globally to include issues affecting women in developing countries outside the United States. In 1997, ten years after I graduated from Boalt Hall, I moved back with my two daughters to my home country, Ghana, West Africa and opened a law practice. Law practice in Ghana, to say the least, is very different. I tend to stay out of the courts because we are required to wear those ridiculous wigs that look awful even on the Brits themselves. Currently Parliament is debating whether marital rape is even technically/legally possible. Need I say more about what it is like to be doing anything as a woman in this, my nevertheless beloved, native land?

As I started observing the lives of women around me, I was initially fascinated by the apparently peaceful co-existence of native traditions and modern western practices in many spheres of Ghanaian life. For example, polygamy, or rather, polygyny, is not uncommon and is sanctioned under customary law; marriage “under the ordinance” or religious wedlock, on the other hand, must be monogamous. With time, however, the increasing tensions between traditional native customs and borrowed western social structures have become more apparent. There appears to be growing contempt for customary practices without a real examination of the necessities or circumstances that gave rise to the old traditions along with a disturbing tendency towards wholesale adoption of a western way of life. Absent such critical analyses, traditions that should give way to improved mores are maintained while those that might be beneficial stabilizers are discarded in favor of western lifestyles. Interestingly, Akan women (numerically, the dominant ethnic group in Ghana), who have traditionally wielded the influence engendered by their matrilineal system of descent, are probably in danger of losing that influence by a growing decided preference for the western mode of matrimony.

DORENE GIACOPINI: I hoped, and continue to hope, that the *Journal* will help foster the inclusion of all (particularly underrepresented women) in the continued development of human society. Only by the participation of all can we create a society that supports the needs and goals of all. We’ve learned first hand over the past twenty years that history does not march in a straight line toward the positive, it needs our proactive involvement.

If it hadn’t been for *BWLJ*, law school might well have been a three-year black hole in my life. Instead, I have great memories of working together toward a valuable common goal. I believe that this work set a tone for the work I have done since that time.

SHEILA O’ROURKE: I hoped that the *Journal* would provide an avenue

for scholarship for more radical ideas and subject matters than would be included in mainstream journals. The *Journal* gave me a sense of accomplishment. The first issue was where I published my first (and only!) law review article.

CATHERINE FISK: My experience on *BWLJ* was one of the highlights of my time in law school. I have joked to generations of students in the years since that it's surprising that I became a law professor because I didn't love law school. But I loved being involved with the journal, and I've been proud ever since to see that it has continued to inspire students. I like to think that our efforts to encourage greater scholarly attention to underrepresented women had some good effect on the world.

4. What is your favorite memory about the *Journal*?

SHEILA O'ROURKE: My favorite memory was the picture of women in profile that was on the cover of the first issue. My other favorite memory is that Herma Hill Kay cited my article in one of her subsequent publications. That was thrilling.

BARBARA FLAGG: My favorite memories of the *Journal* involve a series of debates over whether we would make a publication offer for one very interesting, very non-traditional feminist piece. (That author was untenured, and though we made the offer, she eventually placed the article in a "top ten" traditional law review; a too-common story.) Just before law school, I had been co-owner of a wholly women-owned and operated small business in Santa Cruz, and the *Journal* and our editorial policy discussions were a very welcome connection (and the only one) between law school and my former lesbian-separatist life.

DORENE GIACOPINI: You know, the *Journal* (and Women's Center) was a place where people could say what was on their minds. Since several of the women involved with the *Journal* were pregnant, we got to hear an awful lot about biological practicalities of pregnancy. Some people really enjoyed painting graphic pictures for those of us who were almost straight out of college and a little more squeamish about such things.

JUNE BELTRAN: I have many favorite memories, most of which involve foregoing classes to do "*Journal* business" with Donna – like the many, many jaunts down to the art store at the foot of University Avenue to pick up graphic photostats from (very charming and handsome) Doug at the photostat counter, or like our meetings with Kate Godfrey, another designer, to finalize journal proofs at her tiny office above the peep shows in North Beach in San Francisco. I guess my absolute favorite memory was actually designing and doing the photo shoot for the original cover logo to include the facial profiles of Donna, our classmate Hamida Jackson, and me – we wanted it to be a trio of women of color. We went outside the courtyard one sunny afternoon and sat on the stone wall to pose for each other, trying not to laugh the whole time. We wanted to be taken seriously – we couldn't have laughing women on the cover! It turned out well,

and it was my first cover art. It still makes me smile to see it.

DONNA RYU: It is hard for me to single out a favorite memory. I remember when Karen talked someone in the administration into giving us a computer – a very rare commodity at the time. By today’s standards, it was ridiculously big and slow, but we worked that computer and our dot matrix printer into the ground! Getting our own office (more like a broom closet), separate and apart from the Women’s Center, was also a big moment. I also have fond memories of cutting classes and running journal-related errands with June. Finally, I remember catching the red-eye to New York City to attend the Women in the Law Conference, where my feelings of duty to *BWLJ* pushed me beyond my natural shyness and got me to network with anyone who would stand still long enough to hear about our fledgling journal!

HELEN KANG: I don’t think I can share my favorite *Journal* memory in this forum. It has to do with Karen, her quite insatiable curiosity and fearless cross-examination of an unwitting accomplice, and a zipper.

KAREN SCHRYVER: I actually have a couple of cherished memories. One was the day we received the first issue from the publisher. Finally, we had a legal journal which clearly stated as its mandate the task of addressing issues for the underrepresented, such as women of color, lesbians, and disabled women. And there it was in black and white (and purple!)

Another wonderful memory was a publication party during which *BWLJ* editors and members presented me with a pair of beautiful handmade wooden bookends with a brass plaque engraved with the following excerpt from a poem by Alice Walker:

I am the woman
 offering two flowers
 whose roots
 are twin
 Justice and Hope
 Let us begin.²⁵

III. POSTSCRIPT: WHERE DO WE GO FROM HERE?

Catherine Fisk and Barbara Flagg Reflect

BARBARA FLAGG: Obviously, there are many issues within *BWLJ*’s mandate that still urgently need attention. But I’ve had some difficulty thinking of the ways the *Journal* might improve, because I’m so proud of the way it has stayed within, and really solidified, the mandate. *BWLJ*’s initial statement of editorial policy prioritized “giv[ing] voice to the complex and varying perspectives reflecting the legal concerns of all women, especially the women of

25. Alice Walker, *Remember?* in *HORSES MAKE A LANDSCAPE LOOK MORE BEAUTIFUL* 2 (1984).

color, lesbians, disabled women and poor women whose voices have been severely underrepresented in existing literature.”²⁶ Putting this into my own words, I would have said that we emphasized issues pertaining to underrepresented women. However, the membership of Volume Six took it a step further:

“The sixth volume of the *Berkeley Women’s Law Journal* demonstrates the membership’s renewed commitment to the *Journal’s* original mandate: to publish articles which address the special legal issues affecting traditionally underrepresented women (poor women, women of color, lesbians, and disabled women). While consistently discussing issues of critical importance to women, recent volumes of the *Journal* have not always succeeded in fulfilling that specific mandate. In preparing to publish Volume 6, therefore, this year’s editors departed from past practice. We gave the mandate priority in evaluating submissions, actively solicited articles that met the mandate, and worked with authors and prospective authors to ensure that each piece gave attention to relevant differences among groups of women. In the process, we came to realize that beyond representing a philosophical/moral position, the mandate helps us identify good scholarship by eliminating vague, overbroad, and universalist or essentialist writing from consideration.”²⁷

From that time forward, the *Journal* seems to me to have exclusively addressed the issues and concerns of underrepresented women. I applaud every member who has helped put the mandate into practice.

CATHERINE FISK: I think about the mandate – a journal about underrepresented women – and the reason for publishing such articles: to enrich the scholarly debate. We were hoping to change the world. When I write I wear two hats: I speak to an audience of academics, and I write to attempt to change the law. *BWLJ* explores the kinds of legal scholarship that can achieve social change.

BARBARA FLAGG: Do you think that changing the law is the same as changing the world?

CATHERINE FISK: For me it is.

BARBARA FLAGG: Not so for me. Much of my work is directed more at individuals’ ways of thinking about the world than it is directed at the law. I guess I have more hope for the former as a way of changing the world. But I do think *BWLJ* does both.

CATHERINE FISK: Yes. And the possibility of changing the law looms large in the minds of law students. I had one student who said, “I can’t practice law until the courts change.” I find that depressing. So my question is, given a very conservative legal world – courts, legislatures, executives – what do we say to inspire students today?

BARBARA FLAGG: I agree that things are not at all good out there, and it

26. 1 BERKELEY WOMEN’S L.J. Foreward (1985).

27. 6 BERKELEY WOMEN’S L.J. Foreward (1990).

often is difficult to find inspiring words. But *Hardwick* was decided when we were in law school, and today I get to teach *Lawrence*.²⁸

CATHERINE FISK: Yes. The scholarship I like to see is work oriented toward law reform in a way that will foster meaningful change in the world. It truly matters that we keep doing what the Journal's been doing.

IV. BIOGRAPHIES OF FOUNDING MEMBERS

ANNA BANNERMAN-RICHTER was born in Ghana, and lived in the U.S. and Europe for 30 years before returning to Ghana eight years ago. She graduated from Boalt in 1987 and received her MBA from Haas School of Business in 1989. She has two daughters, ages 22 and 15 years. She has acquired some reputation for being a rabble-rouser, primarily for her work on the Fundamental Human Rights Project. She raised funds to print 10,000 copies of Chapter 5 of the Ghana Constitution, which contains the Fundamental Human Rights of Ghanaians. The booklets, with a preface by the Commissioner on Human Rights and Administrative Justice, a High Court judge, and herself, was distributed free to secondary school students and the police. After many years of military rule, she is glad to report that things are quite a bit better now in terms of respect for the rule of law in her native land.

J.D. (JUNE) BELTRAN was a Design and Publication Editor for *BWLJ*. After graduating in 1986, she spent several years litigating antitrust and intellectual property cases. In 1994, she left this to pursue her life-long dream of being a visual artist (although while pursuing her M.F.A., she left her studio and donned a suit once a week to teach litigation as adjunct faculty at Golden Gate University School of Law). In 1998, she received her M.F.A. and graduated at the top of her class from the San Francisco Art Institute. Her artwork has been screened, exhibited, and reviewed internationally. She is now visiting faculty at the San Francisco Art Institute, and she also teaches filmmaking and fine art to low income and senior residents at the TODCO residencies in Downtown San Francisco. Her former law colleagues and clients attend her openings, and her copyright knowledge comes in handy, but her sample briefs, motions, and depositions remain in storage.

CATHERINE FISK is now a tenured law professor at Duke University Law School. After law school, she clerked on the Ninth Circuit for two years and spent three years practicing law in Washington, D.C. before beginning her teaching career at the University of Wisconsin. She began her career as a law professor by representing a woman of color who was suing to challenge race, gender, and national origin discrimination in faculty hiring at the University of Hawaii Law School. She is grateful for the inspiration and education she received from *BWLJ* (and from Boalt), particularly the unique combination of concern with real world issues of law and social justice and concern with

28. *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Lawrence v. Texas*, 539 U.S. 558 (2003).

expanding the academic discourse to include new voices. She believes that what she learned from friends at *BWLJ* contributed to whatever successes she has had both as a lawyer and as a law professor.

BARBARA FLAGG: After graduating from Boalt in 1987, Barbara Flagg clerked for a year for Ruth Bader Ginsburg, then on the D.C. Circuit. She joined the law school faculty at Washington University in St. Louis the next year, and has been teaching there ever since. Barbara teaches Critical Jurisprudence, Sexuality and the Law, and a Fourteenth Amendment course, and writes on the subject of Whiteness (from a critical perspective). Some of her writing on the invisibility of whiteness and white privilege has been excerpted in books, and used in courses for undergraduates; she describes that as her academic version of social action.

DORENE GIACOPINI served as *BWLJ*'s second Editor-in-Chief. She has been a full-time mediator for the California Special Education Hearing Office (SEHO) for more than 10 years and has mediated thousands of cases. Ms. Giacopini has a lifelong commitment to the advancement of children and adults with disabilities and has served on the Boards of a number of organizations that are similarly dedicated. After receiving her J.D. in 1986 from Boalt, Ms. Giacopini worked as field representative to Congressman Norman Y. Mineta where she was involved with legislation concerning redress for Japanese-Americans interned during World War II, as well as the passage of the Americans with Disabilities Act. For the past decade, Ms. Giacopini has been the U.S. Department of Transportation representative on the Bay Area's Metropolitan Transportation Commission.

HELEN H. KANG was a co-founder and Articles Editor for the first two issues of *BWLJ*. She supervises law student clinicians in environmental cases as Associate Professor and Director of the Clean Air Accountability Project at the Environmental Law and Justice Clinic at Golden Gate University School of Law. With a staff of lawyers and a scientist, the Clinic primarily provides legal and technical services to communities bearing disproportionate environmental burdens, particularly communities of color and low-income neighborhoods. Before joining the Clinic, she served as a Trial Attorney with the U.S. Department of Justice in environmental enforcement cases and practiced at law firms in San Francisco.

Since graduation, it has taken **SHEILA O'ROURKE** a long time to decide what she wanted to be when she grew up. She dabbled in law teaching, non-profit management, and government civil rights lawyering. In a lucky turn of events, she was hired by U.C. Berkeley to work on academic equity and affirmative action issues. She now works for the University of California Office of the President, working with system-wide faculty gender equity and racial diversity programs. She loves working in higher education and was extremely pleased with Boalt's choice of Christopher Edley as dean.

DONNA M. RYU was a co-founder, Design and Publication Editor, and Associate Editor for the first two issues of the *BWLJ*. After graduating in 1986,

and after a two-year stint practicing appellate law in a large firm, she spent ten years litigating plaintiffs' civil rights cases, including three years in her own all-women's law firm. In 1998, she joined the clinical faculty at Golden Gate University School of Law to become Associate Director of the Women's Employment Rights Clinic. In 2002, she joined the clinical faculty at U.C. Hastings College of the Law, where she teaches and supervises students representing low-income clients in the Civil Justice Clinic, and where she also teaches a class entitled "Roles and Ethics in Practice."

KAREN SCHRYVER was a co-founder and first Editor in Chief of the *Berkeley Women's Law Journal*. After graduating from Boalt Hall in 1986, she received a Berkeley Law Foundation Grant, which allowed her to open a non-profit law office serving female prisoners in Southern California. She successfully litigated lawsuits against state and county agencies regarding accessible bathroom facilities for physically disabled female inmates, appropriate undergarments and feminine hygiene supplies made available to female jailed inmates, and the transfer and protection of a female prisoner who charged a prison guard with sexual assault. Subsequently, she worked as a staff attorney concentrating on prison conditions at the Prison Law Office, right outside the gates of San Quentin State Prison in Northern California. From 1990 to 2000 she worked at the California Appellate Project in San Francisco, assisting counsel and representing inmates on California's condemned row in their state and federal capital appeals. From 2000 to present, Ms. Schryver has been in solo practice specializing in California federal capital habeas proceedings.

ANN VAN DE POL worked on the journal editorially her second year without attending any meetings since all matters related to law school, including the Journal, were relegated to her very young son's non-waking hours. She now works as a solo practitioner in Oakland where her practice focuses on appellate work in family law along with some juvenile appeals and family law trial court cases. She returned to the classroom after becoming an attorney, teaching in "law and society" programs at Purdue University and U.C. Davis. She also taught family law briefly at Santa Clara University Law School. Her son, who was born at about the same time as *BWLJ*, is an undergraduate at U.C. Berkeley. He is considering going to law school.