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ARE WOMEN STUCK ON THE ACADEMIC LADDER?*

Deborah Jones Merritt**

Good morning, both here in Chicago and to those of you in New York and Washington. It was a great honor to be asked to speak at this conference and a delight to find so many friends in the audience.

My job is to offer an empirical overview of women's status on law faculties, but I want to start with a few personal words. I think every female law teacher feels stuck at some point during her career. I know that I did, and I probably will feel that way again. I felt quite stuck about ten years ago, after I had been teaching for just five or six years. I had many fine colleagues, but I felt that my faculty as a whole didn't value women sufficiently. And I wasn't sure how I wanted to focus my own research or teaching.

I found two ways to get unstuck. I want to share them briefly with you, because some of you may find the same ideas useful. The first thing I did was to make connections with faculty in other departments, at other law schools, and through national groups like the Association of American Law Schools. These faculty, many of whom were women and many of whom did work

* Editors' note: Deborah Jones Merritt's remarks were delivered at a conference sponsored by the Association of American Law Schools (AALS) in October 1999. While Merritt did not participate in the *UCLA Women's Law Journal's* Spring Symposium, her remarks, along with the remarks of many others who participated at the AALS conference, contribute to the dialogue concerning discrimination against women in academia. We have made every effort to preserve Merritt's remarks and accompanying outline, reprinted *infra*, in their original forms.

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related to women's issues, helped me find a new focus for my own work. Needless to say, they also valued the contributions of female professors. It was exhilarating to find so many faculty interested in women's issues from so many different perspectives. And it was energizing to find my own work valued in that setting. Looking outside my faculty renewed me and refreshed my perspective.

The second thing I did ten years ago was to pursue a new type of scholarship. Not many law professors did social science research in 1990, but I decided that I wanted to study the status of women empirically. Through my contacts in other departments, I met Barbara Reskin, a top-flight sociologist. Together, we compiled a database of law faculty that has allowed us to explore both sex and race trends in the hiring and advancement of law teachers. The findings I'll present today are all drawn from that project. Equally important, Barbara and some of her colleagues helped me learn the techniques of a social scientist. I was fascinated by the field, and today much of my research and teaching focuses on combining law with social science. Not everyone values this combination — that's one of the risks of working in a new field. But I found that doing something new, whether in the classroom, in scholarship, or in service, was an excellent way to value myself and get unstuck.

Now let's talk more generally about the status of women in the legal academy. My research focuses on both tenure- and nontenure-track teachers who began teaching at law schools during the late 1980s. By looking at this group, as they established themselves over the last ten years, we can get a sense of how women are faring in the academy. I won't follow my written outline in the order in which it appears, but all of the numbers I'll mention appear there. The outline also includes references to longer discussions of the data for those of you who want them.

I'll start with some good news. Among the almost 1,100 tenure-track professors who began teaching during the years I studied, 38% were women. Four-fifths of those women were white and one-fifth were women of color. Those percentages pretty well matched the percentages of white women and women of color graduating from law school during the early 1980s — the law school classes that supplied most of these new professors. In fact, women and minority candidates were hired onto faculties at a somewhat higher rate than their presence in the graduating classes would have predicted. For the first time, during the late

1980s, women were obtaining tenure-track positions in substantial numbers.

The majority of these women obtained tenure and remained in teaching. By 1996, they had published (on average) four law review articles, and a sizable percentage of those articles appeared in the top journals. On a per article basis, their scholarship has garnered as many citations as that of their male colleagues. Indeed, the most cited law professor among the 1,100 professors I studied is an African American woman — and 3 of the top 5 citation getters are African American women.

Meanwhile, among women who started nontenure-track jobs in the late 80s, almost one-third moved into tenure-track positions. Women of color were even more successful than white women in making this move; half of them succeeded in moving to the tenure track. Women also succeeded in moving up the academic ladder into administrative positions. Tenure-track women in this group were as likely as their male colleagues to become associate deans and program directors, although some race differences emerged in these positions. Women of color, like men of color, were especially likely to become associate deans, but they were somewhat less likely than men or white women to be named program or institute directors.

The women who began teaching during the late 1980s, finally, brought new perspectives to the classroom and attached a particularly high value to both teaching and public service. In this respect, I'm confident that they matched both the women who preceded them and those who are joining the academy today. Among the group I studied, white women and women of color, as well as men of color, were significantly more likely than white men to invoke feminist and critical race theory in the classroom. The three groups of former "outsiders" also valued public service more highly than did white men. And both white women and women of color rated excellence in teaching as significantly more important to their personal sense of success than men did. The women, by the way, did not attach these high values to teaching and service by undervaluing scholarship. They rated scholarship just as highly as did men, but added these extra commitments to service and teaching.

These are stunning achievements, and we should proclaim them widely. Women have joined the legal academy, they have stayed, they have moved up the academic ladder, and they have changed our vision of the world. Women not only have suc-

ceeded on faculties, they have shown that the old law schools were narrow, myopic places, with a stunted view of both law and the society it serves. The blinders aren't completely off yet, but they are starting to shred. We discuss subjects in class today, like the battered woman's syndrome or the intersection of sex and race, that no one mentioned when most of us went to law school.

There is, however, a dark side. Despite these many achievements, women have not come as far as their male contemporaries during the last ten years. Often, they continue to suffer from the very biases they expose through their scholarship and teaching. Although women have moved steadily into tenure-track positions, they were still (during the period I studied) significantly more likely than men to take nontenure-track posts. Controlling for credentials and publications did not explain this difference. Given a man and woman with comparable resumes, the man was more likely to land a tenure-track appointment in 1990 while the woman was more likely to take a nontenure-track one. And once in those nontenure-track positions, women were less likely than men to move onto the tenure track.

Among those who did secure tenure-track appointments, men taught at significantly more prestigious schools than did women. Thirteen percent of the white men hired on the tenure track during the five years I studied obtained jobs at the top sixteen law schools. Just 2% of minority women hired during those years found jobs at those elite schools, with white women and men of color falling between the two extremes. Men were also hired at significantly higher ranks, and presumably higher salaries, than were women. Close to half of the white men who started tenure-track jobs between 1986 and 1991 began teaching as associate or full professors. Less than a third of the women entered the tenure track at those advanced ranks.

Men were also significantly more likely to teach constitutional law, a sought after subject among new teachers, while women were significantly more likely to teach trusts and estates or skills courses. Despite the importance of these subjects — and I'm proud to say that I teach legal writing myself — they may present fewer opportunities for advancement than does constitutional law. And we know that skills courses are especially labor intensive to teach.

Partly for this reason, the women in this group have published less, on average, than the men and have been less likely to publish in the top journals. Although they value teaching more

highly, the women have won significantly fewer teaching awards. The white men have moved overwhelmingly into the ranks of full professors, with 1 out of every 8 holding a chair or named professorship. A majority of women have also become full professors, but more of them (especially among women of color) are still associate professors. The white men are twice as likely as the white women to hold chairs, and they are four times more likely than the women of color to do so.

When it comes to deanships the numbers are even more stark. Although this is a relatively junior cohort of professors, twenty of the white men have already been deans or acting deans. Just one white woman, one man of color, and no women of color from this group have served as deans.

Women, finally, have been more likely than men to exit teaching — and the departure rate is especially high for women of color. Among the tenure-track professors I studied, about one-fifth of the white men left teaching. That rate rose to more than one-quarter for both white women and men of color, and to a very troubling one-third among women of color.

How can such grim statistics exist side-by-side with the achievements I described? The achievements signal women's talents, as well as the insights they have been able to offer a field constrained far too long by a white, male, heterosexual, upper-class view of the world. For those willing to look, women's contributions to the legal academy have been breathtaking.

But the negative numbers show how much of the battle still is to be won and how many women are still stuck on the academic ladder. In my studies, I have identified three forces that seem to hold women back. The first is raw discrimination. In many of my analyses, significant sex differences remain even after controlling for educational credentials, professional achievements, publications, age, family status, geographic mobility, and any other factor I've been able to measure. Even when a woman looks just like a man — on paper anyway — she is hired at a lower rank and assigned to teach less prestigious courses. She probably is also paid less and receives fewer subtle encouragements to succeed. Today, much of this bias may be unconscious — although I have heard some hair-raising stories over the last twenty years — but it is real nonetheless. Until we find a way to confront this bias, women will continue facing unfair hurdles to their advancement.

The second force constraining women is their unequal family and household commitments. The academic women I have studied are less geographically mobile than their male peers — and the professional world penalizes them for that immobility. In statistical terms, it explains much of their presence at less prestigious law schools as well as their greater likelihood of taking nontenure-track jobs. According to the women themselves, most of those geographic constraints stem from family ties.

Family commitments may also explain some differences in men's and women's credentials — small differences that over time produce large gaps in their professional achievements. The female professors I studied, for example, were less likely than the men to have clerked for federal appellate judges or Supreme Court Justices — although they were more likely to have clerked for district court judges. Appellate clerkships, like tenure-track faculty positions, often require more geographic mobility than do district court clerkships. When I counsel students, I sometimes find that the women are less able than the men to relocate for prestigious clerkships and that they are more willing to take local clerkships to accommodate their partners or families.

And on a daily basis, housework, childcare, and emotional nurturing of family members exact a greater toll on most female faculty than on their male counterparts. The differences are not as dramatic as they once were, but they still exist. This is a difficult problem to solve. We can't end it by giving up our own willingness to care for others. We should want to take our families into account in making professional decisions. If anything, we need more nurturing of children and adults throughout society. Instead, we need to continue pushing, on a professional as well as a personal level, for greater recognition of these demands and for a broader sharing of them.

Men and women, of course, don't need to be identical in the new millennium. This leads me to the final factor that may seem to hold women back, a point well known to everyone here. Women don't always want the same things as men. Some of the women who take nontenure-track jobs may want those jobs, not tenure-track ones. They may be more concerned with increasing the security, status, and salary attached to their current jobs than with leaving them for conventional professorships. Women sometimes prefer to publish in a journal of gender law or law and sexuality — and it is reasonable to do so. And surely there are some women who have made perfectly sensible decisions that

they don't want to be deans. If women want different career paths than men, then we shouldn't measure their advancement along traditional lines.

We have to be quite careful, though, with this rationale. Women almost certainly did not want all of the ways in which they have been disadvantaged compared to their male peers. Equally important, current choices are based on current conditions in the workplace. If some women choose to take nontenure-track jobs, it may be because they perceive tenure-track positions as incompatible with their family responsibilities. If some women choose to leave teaching, it may be because they find their institutions unsupportive. Our challenge is to redesign the academy in a way that will honor women's preferences, to the extent those differ from the preferences of men, without relegating women to lower status positions. That is a daunting task, but I've seen the talents of women law teachers, both through the lens of my research and on a daily basis. And as Liz said in her introduction, collective work is one of our strengths as women. I think we can do it.

