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# ARE WOMEN STUCK ON THE ACADEMIC LADDER? AN EMPIRICAL PERSPECTIVE\*

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Feeling stuck is subjective; every woman experiences the job market differently. Despite the individuality of experience, this outline attempts to offer a somewhat global view of how men and women have fared in the legal academy. Sections I and II examine the experiences of law teachers who began their first non-tenure-track law school position in 1989-90 or 1990-91. Sections III-IX describe the progress of teachers hired onto the tenure track between 1986 and 1991.<sup>1</sup> By comparing the experiences of men and women in each of these groups, I try to show where women have gotten stuck and to suggest some reasons for their setbacks. The data also offer some successes to celebrate. These findings cannot capture the subjective feelings of women in the database, or of the many other women in law teaching, but I

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\* Editors' note: This piece is the outline to which Deborah Jones Merritt refers in her remarks delivered at the AALS conference held in October 1999 and reprinted, *supra*, in this issue of the *UCLA Women's Law Journal* as *Are Women Stuck on the Academic Ladder?* As with her remarks, we made every effort to preserve her outline in its original form.

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1. Information is drawn from a database of law teachers I created together with Barbara Reskin (Professor of Sociology, Harvard University). The database includes all professors who began their first tenure-track appointment at an accredited U.S. law school between fall 1986 and spring 1991. For further information about the database, the process of creating it, and the variables it includes, see Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 206-30 (1997). The database also includes information about many nontenure-track teachers who joined law faculties during those years. Debra Branch McBrier (Assistant Professor of Sociology, University of Miami) supplemented that information for analyses reported in Debra Branch McBrier, *Barriers to the Sex and Race Integration of Law Academia: Processes of Ghettoization and the Revolving Door* (1999) (unpublished Ph.D. dissertation, The Ohio State University) (on file with author).

hope the overview will provide a context for individual experience.

### I. NONTENURE-TRACK JOBS

A. Women disproportionately fill nontenure-track positions. Between 1989 and 1991, a total of 486 individuals began their first law-school teaching post. For men, the majority of these jobs were on the tenure track: 62% of the men first hired during these two years assumed a tenure-track position, 38% took nontenure-track posts. For women, the percentages were reversed: 42% of the women found a tenure-track job, 58% assumed a nontenure-track position.<sup>2</sup>

B. The sex difference affected both white women and women of color — although white women were especially likely to fill nontenure-track posts.<sup>3</sup> Thus, 63% of white women (compared to 43% of white men) took a nontenure-track position; 37% of minority women (compared to 20% of minority men) assumed a nontenure-track job.<sup>4</sup>

C. Controlling for academic achievement and professional background did not eliminate this sex difference. Women were significantly more likely than men to assume nontenure-track positions — even when their credentials were identical to those of men.<sup>5</sup>

D. Women's greater geographic constraints helped account for the difference. Teachers who confined their job search to a single city or state were significantly more likely than other teachers to accept nontenure-track positions. Controlling for this variable eliminated the sex differences identified above.<sup>6</sup>

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2. See McBrier, *supra* note 1, at 165 (reporting that 159 out of 258 men obtained tenure-track posts, while 95 out of 228 women did so).

3. Because law schools hired so few teachers of color during the late 1980s, researchers have had difficulty analyzing separate categories of African American, Latina, Asian, or Native American teachers. In this outline, I group these individuals together to show some differences between white women and women of color. Other scholars have begun the very important work of identifying experiential differences among teachers of color.

4. See McBrier, *supra* note 1, at 165.

5. See *id.* at 143. Women of color were not quite as disadvantaged as white women on this measure. See *id.* at 142.

6. See *id.* at 157-60. McBrier cautions, however, that her control for geographic constraints includes some measurement error. See *id.* at 158. For further discussion of geographic constraints, especially how they affect tenure-track professors, see Deborah J. Merritt et al., *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395.

## II. MOVING FROM NONTENURE-TRACK TO TENURE-TRACK POSITIONS

A. Women appear less likely than men to move from nontenure-track to tenure-track positions. Among the 207 white teachers who began nontenure-track posts in 1989-91, 30% of the women and 37% of the men had moved into tenure-track jobs by 1997.<sup>7</sup>

B. Only twenty-five teachers of color began nontenure-track positions during those years, so it is harder to draw firm conclusions about their progress. Eight of the fifteen women (53%) and five of the ten men (50%) moved onto the tenure track.<sup>8</sup>

## III. TENURE-TRACK BEGINNINGS

A. Law schools started 1,094 new tenure-track professors between the fall of 1986 and the spring of 1991. More than one-half (53.1%) of these new hires were white men, 30.3% were white women, 9.0% were men of color, and 7.6% were women of color.<sup>9</sup>

B. The men in this group were hired at significantly more prestigious schools than the women — and women of color were particularly disadvantaged. For example, 13.1% of the white men started teaching at one of the top sixteen law schools, compared to 10.3% of white women, 10.1% of men of color, and 2.4% of women of color.<sup>10</sup>

C. Men were also significantly more likely than women to begin their tenure-track careers as associate, full, or even chaired professors. Forty-three and seven-tenths percent of the white men and 40.4% of men of color obtained initial appointments at one of these higher ranks. Only 30.5% of white women and 30.1% of women of color secured these higher-level appointments.<sup>11</sup>

D. Significant differences also emerged in the courses men and women agreed to teach. Men were significantly more likely than

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7. See McBrier, *supra* note 1, at 175-76, 206.

8. *See id.*

9. See Merritt & Reskin, *supra* note 1, at 230. Refinements in the database since publication of that article, primarily involving new information about tenure-track status, have reduced the count of new tenure-track professors to 1,086. The percentages and relationships reported throughout this section, however, remain valid.

10. *See id.* at 237.

11. *See id.* at 252.

women to teach constitutional law. Women were significantly more likely to teach trusts and estates or skills courses.<sup>12</sup>

E. Controlling for academic credentials, professional experience, and mobility constraints explained the fact that men were more likely than women to be hired at the most prestigious schools.<sup>13</sup> These controls, however, did not explain differences in initial rank or teaching assignments.<sup>14</sup> Men, in other words, were significantly more likely than women to be hired at higher ranks and to teach different subjects — even when men and women had identical credentials.<sup>15</sup>

#### IV. TENURE-TRACK RETENTION

A. Of the almost 1,100 professors who began tenure-track jobs between 1986 and 1991, one-quarter had left the tenure track by the fall of 1998. The departure rate, however, varied by sex and race. Just 22.3% of the white men had left the tenure track, compared to 26.5% of white women, 28.6% of men of color, and 32.9% of women of color.<sup>16</sup>

B. These differences are particularly disturbing because, as previously noted, white men began with the largest share of tenure-track positions, while women of color started with the smallest share of those positions. Differential departure rates skewed these proportions even further. By the fall of 1998, white men held 55.1% of the positions in this career cohort; white women, 29.3%; men of color, 8.6%; and women of color, 7.0%.<sup>17</sup>

[The remaining analyses focus on professors from the original cohort who remained on the tenure track in fall 1998.]

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12. See *id.* at 259; see also Deborah Jones Merritt, *Who Teaches Constitutional Law?*, 11 CONST. COMMENTARY 145 (1994).

13. See Merritt & Reskin, *supra* note 1, at 245-46. Indeed, when we controlled for these factors and examined the full range of schools (rather than dividing schools into just two categories), we found that white women obtained jobs at modestly more prestigious institutions than white men with comparable credentials. See *id.* at 246-51. Women of color, however, did not benefit from that preference. See *id.* at 251.

14. See *id.* at 252-73.

15. For further exploration of these discrepancies, focusing particularly on women of color, see Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992). See also Deborah Jones Merritt, *The Status of Women on Law School Faculties: Recent Trends in Hiring*, 1995 U. ILL. L. REV. 93.

16. See Deborah Jones Merritt, *Scholarly Influence in a Diverse Legal Academy: Race, Sex, and Citation Counts*, 29 J. LEGAL STUD. (forthcoming 2000) (manuscript at 347, 367, on file with author) [hereinafter Merritt, *Scholarly Influence*].

17. See *id.* at 352.

## V. PROMOTION

Of the 816 professors who remained on the tenure track in fall 1998, most had risen above the rank of assistant professor. Again, however, race and sex differences emerged. The following table shows the distribution of each demographic group across four ranks. White men were considerably more likely than their female or minority colleagues to have become full or chaired professors. White women and men of color resembled one another in their rank distribution. Women of color were the least likely to have secured chairs and the most likely to remain in the associate professor rank.<sup>18</sup>

1998 Rank	Women of Color	White Women	Men of Color	White Men
Assistant Professor	1.8%	0.8%	4.3%	0.4%
Associate Professor	43.9%	24.7%	25.7%	14.0%
Professor	50.9%	67.8%	62.9%	73.1%
Chair	3.5%	6.7%	7.1%	12.4%

VI. ADMINISTRATIVE POSITIONS<sup>19</sup>

A. White men in this cohort were far more likely than their female or minority colleagues to have served as deans or acting deans. Twenty white men (4% of those who remained in teaching) had held one of these positions. Just one white woman, one man of color, and no women of color had held a deanship.

B. Women, on the other hand, matched men in serving as associate deans — and men and women of color were particularly likely to hold these positions. Thirteen percent of men of color, 12% of women of color, 9% of white men, and 9% of white women had served as associate deans.

C. White women, men of color, and white men appeared equally likely to have served as program or institute directors. Ten percent of white women, 9% of men of color, and 10% of white men had served in this capacity. Women of color were somewhat less likely to have held these positions: just 5% had done so.

D. In absolute numbers, of course, women still lagged behind men as associate deans or program directors. Forty-one white

18. The figures in this table have not been previously reported, but are drawn from the database described in Merritt & Reskin, *supra* note 1.

19. The figures in this Section of the outline have not been previously reported, but are drawn from the database described in Merritt & Reskin, *supra* note 1.

men had served as associate dean, compared to twenty-two white women, nine men of color, and seven women of color. Similarly, forty-seven white men were program directors, compared to twenty-three white women, six men of color, and three women of color. It is also possible that men and women fill different types of associate dean positions; more information is needed on this.

## VII. TEACHING<sup>20</sup>

A. Even after eight to twelve years on the tenure track, men and women differ in the subjects they teach. Men are still significantly more likely to teach constitutional law; women disproportionately teach trusts and estates or skills courses.

B. White men teach a wider variety of classroom courses than do white women, women of color, or men of color. The averages are 4.0 courses for white men, 3.6 for white women and men of color, and 3.5 for women of color. On the other hand, white men average fewer seminars (.67) than do white women (.94), men of color (.75), or women of color (.72).

C. White men teach slightly more credit hours (11.9) than do white women (11.6) or women of color (11.6), but men of color average somewhat fewer credit hours (10.9).

D. Men are more likely than women to report receiving a teaching award, with women of color particularly disadvantaged in this category. Forty percent of white men, 39% of men of color, 32% of white women, and 19% of women of color reported receiving a teaching award.

E. Women, however, rate achieving success in teaching as more important to them personally than do men. White women gave an average rating of 4.7 (on a scale of 1-5) when asked how important it was for them to achieve success in classroom teaching. White men averaged 4.6; men of color, 4.5; and women of color gave the highest average rating, 4.9.

F. All four demographic groups stress doctrine, legal reasoning, and analysis more than any other perspective in the classroom. White men, however, are significantly more likely than women or

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20. Most of the figures in this section of the outline have not been previously reported, but are drawn from the database described in Merritt & Reskin, *supra* note 1. Information about teaching load, attitudes toward teaching, and classroom perspectives was gathered through a survey described in Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765 (1998) [hereinafter Merritt, *Research and Teaching*].

minorities to add economic analysis to classroom presentations. Conversely, white men are significantly less likely than white women, women of color, or men of color to discuss feminist or critical race theories in the classroom. The latter three groups resemble one another in their likelihood of teaching these alternative perspectives, although white women are the most likely to stress feminist theory (followed by women of color), and women of color are the most likely to stress critical race theory (followed by men of color).

G. White women and women of color are as likely as white men to spend a semester as a visiting professor at another law school, but men of color are more likely than all three groups to visit. After controlling for sex and race, professors who stress feminist theory in their teaching are significantly less likely than their colleagues to visit, while those who stress critical race theory are significantly more likely to do so.<sup>21</sup>

### VIII. SCHOLARSHIP

A. Women rate success in research and publications as slightly less important to them than men do, although the differences are not statistically significant.<sup>22</sup>

B. At least at this point in their careers, men have published significantly more articles than women. White men, on average, have published 5.89 articles since joining the tenure track; men of color average 4.56; white women, 4.10; and women of color, 3.31.<sup>23</sup>

C. Men, on average, have also published more articles in one of the top 20 law reviews: 1.12 for white men, 0.79 for men of color, 0.72 for white women, and 0.42 for women of color.<sup>24</sup>

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21. See Deborah Jones Merritt, *Calling Professor AAA: How to Visit at the School of Your Choice*, 49 J. LEGAL EDUC. (forthcoming 2000) (manuscript at 4, on file with author). This article includes a somewhat humorous look at the factors (including alphabetic placement of last name) associated with a professor's likelihood of visiting another school.

22. This finding has not been previously reported. I gathered information about attitudes toward scholarship through a survey described in Merritt, *Research and Teaching*, *supra* note 20.

23. See Merritt, *Scholarly Influence*, *supra* note 16, at 352 (reporting averages for both articles published after hiring in top-20 law journals and other post hiring articles).

24. See *id.*



D. Some, but not all, of the sex difference in publication rates disappears after controlling for prestige of the schools at which professors teach, courses taught, pre-hiring publications, and educational credentials.<sup>25</sup>

E. Women's scholarship is cited as frequently as white men's scholarship. That is, after controlling for factors such as socio-economic background, religion, prestige of tenure-track institution, subjects taught, educational background, and number of pre-hiring publications, there is no significant difference in the citation rates for white men, white women, and women of color. Men of color fall somewhat behind these three groups in their citation rates.<sup>26</sup>

F. The most cited scholar in this cohort of professors is an African American woman, and three of the five most cited scholars are African American women. Among the ten most cited scholars, four are African American women and one is a white woman.<sup>27</sup>

G. These citations are not token references. The median citation count among all professors in this cohort was 52; the three most cited African American women earned 745, 766, and 995 citations apiece. More than half of the sources citing these women, moreover, contained multiple references — the same proportion of multiple references received by the two white men ranking highest on citation counts.<sup>28</sup>

## IX. BEYOND THE ACADEMY<sup>29</sup>

A. White women and men of color rated achieving success in public service as significantly more important to them than white men did, while women of color placed the highest value on service. On a 5-point scale, the average ratings were 3.4 (white

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25. This regression analysis has not been published. Similar analyses, controlling for additional factors, appear in Merritt, *Research and Teaching*, *supra* note 20, at 786, 798. Those analyses show no remaining sex differences in publication rates after adding a full set of controls. I plan to explore further the factors affecting differences in publication rates in future research.

26. See Merritt, *Scholarly Influence*, *supra* note 16, at 363.

27. See *id.* at 365.

28. See *id.* at 366.

29. The findings in this final section have not been previously reported. Like other findings, they rely upon the database described in Merritt & Reskin, *supra* note 1, and, in particular, on information from the survey described in Merritt, *Research and Teaching*, *supra* note 20.

men), 3.6 (white women), 3.8 (men of color), and 4.0 (women of color).

B. Men and women of color are significantly more likely than white men and women to report that they address their scholarship to the general public.

C. White women attach less importance to paid consulting than do white men, men of color, or women of color. Men of color are most interested in consulting work; white men and women of color show a similar interest in consulting.

