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THE GENDERED ASPECTS OF SOCIAL JUSTICE WORK AND OCCUPATIONAL SEGREGATION IN THE LEGAL ACADEMY: A REVIEW OF 2003

Barbara J. Cox*

WLE Chair—2003

I. INTRODUCTION

My service as chair of the Section on Women in Legal Education (“Section”) was rather unusual. I started serving on the Executive Committee in 1999 and became Chair-Elect in 2001. Veryl Miles (Catholic) was Chair for 2001 but became Deputy Director of the Association of American Law Schools (AALS) in August that year, so I served out her term as Interim Chair from August 1 to December 31, 2001. Then I became Chair-Elect again in 2002 (because I was on sabbatical that year and could not serve as Chair) and Vernellia Randall agreed to step in as Chair. I served as Chair in 2003 and presided over Section events at the 2004 Annual Meeting in Atlanta.

Many of the issues facing the Women’s Section when I was chair reminded me of those faced by Clara Shortridge Foltz. I was awarded a professorship honoring Clara Shortridge Foltz from California Western in May 2008, and researched Clara’s life prior to receiving the professorship. As many of you may know, based on Barbara Babcock’s excellent work as Clara’s biographer, Clara was the first female lawyer admitted to the bar in California, was instrumental in adding protections against sex discrimination in employment and education into the California Constitution, and helped create the first public defenders’ offices in the country.¹ The rest of this article discusses the issues raised in the 2001 and 2003 Section newsletters and the issues raised in the Section’s panels at the 2004 annual meeting, some of which are similar to ones that Clara faced.

II. NEWSLETTER

I wrote two newsletter columns as Chair, back when the newsletter was mailed to all Section members. In fact, we had to receive special permission from the Association of American Law Schools (“AALS”) to use our reserve funds to help pay for printing and mailing of the newsletter because it always exceeded the length and number of recipients permitted by the AALS.

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¹ BARBARA BABCOCK, *WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ* (2011).

A. Fall 2001

In my newsletter column that fall, I shared some musings I had about attending the AALS Faculty Recruitment Conference (“FRC”) in Chicago in 1985 and then returning for my third time as a recruiter in 2001. Writing from a distance of sixteen years since my first FRC, I reflected on the gratitude I felt (and still feel) to have a job in legal education. Now, after twenty-eight years in the profession, I still feel gratitude for having a wonderful job that I share with dedicated, interesting, and hard-working colleagues and the opportunity to teach and interact with the newest members of our profession. Although maintaining some semblance of work/life balance is challenging and I continue to struggle with saying that difficult word, “no,” the flexibility and choices that we have in the legal academy are now even more important in my life. I teach at California Western School of Law (“CWSL”) in San Diego from January to August each year because we are on a trimester system with three full “semesters” each academic year, and I spend my non-teaching, research semester in southwestern Wisconsin every fall. Writing in a rural setting away from the demands of committee meetings, student organization events, and law school functions has allowed me to increase my productivity and preserve my sanity. Ten years after I wrote in the Section newsletter that flexibility (whether potential or actual) is one of the greatest gifts of working in legal education, I am living that gift more now than I ever dreamed possible.

B. Fall 2003

I reported in that newsletter column that the Section needed to select a new Chair-Elect in January 2004 because of a limitation on service imposed by the AALS bylaws. Debra R. Cohen, who taught for many years at West Virginia University College of Law and who was scheduled to become Chair in 2004, had joined the faculty of Southern New England School of Law (now University of Massachusetts School of Law—Dartmouth). Because Southern New England was not a member of the AALS, Debra was not permitted to serve as Chair, under Section 12.3 of the AALS Executive Committee Regulations (“ECR”), which limited Section leadership positions to faculty members at AALS-member schools.² On behalf of the Section, I contacted Executive Director Carl Monk and Associate Director Jane La Barbera to ask for an exemption from this ECR to allow Debra to serve. Our Section was concerned that Debra would be unable to have the opportunity to serve as Chair despite her significant service to the Section, including organizing the Section’s Hospitality Suite at the FRC for many years. But both Monk and La Barbera told me that the Committee on Sections

² ASS’N OF AM. LAW SCHOOLS, EXECUTIVE COMMITTEE REGULATIONS 1.3 (a) (2005), available at http://www.aals.org/about_handbook_regulations.php. ECR 1.3(a) now limits membership in Sections to faculty and professional staff of AALS member schools.

and the Annual Meeting and the Executive Committee had repeatedly denied requests for exemptions from this regulation. Thus, Debra was unable to become Chair and Melissa Tatum (Tulsa) agreed to serve as Chair, instead of Chair-Elect, for 2004. Our Section continues to owe a deep debt of gratitude to Debra Cohen for the countless hours she has spent insuring that our Hospitality Suite was a place for women to gather while attending the FRC.

III. 2004 ANNUAL MEETING

The rest of this article discusses issues that the Section presented at the 2004 AALS annual meeting because those issues continue to be of importance today. Both topics are also good examples of how the Section has contributed to important conversations and changes in the legal academy, while at times struggling to actualize the aspirations to which we subscribe. We offered two programs in 2004: “*Social Justice and Gender*” and “*Occupational Segregation in the Legal Academy*.” The program chairs, Stephanie Wildman from Santa Clara and Sue Liemer from Southern Illinois, put on superb events and raised issues that were timely then and continue to be important today.

A. Social Justice and Gender

This panel consisted of Jane H. Aiken, Washington University, St. Louis (now Georgetown); Martha Mahoney, University of Miami; Shauna Marshall, University of California-Hastings; and Victor M. Hwang, Managing Attorney, Asian Pacific Islander Legal Outreach (now Assistant District Attorney in Charge of Hate Crimes, San Francisco), with Stephanie M. Wildman, Santa Clara, serving as moderator. Stephanie approached me at the 2003 Annual Meeting and suggested this program. The focus was to recognize that female students participated in public interest and social justice programs and classes in greater numbers than male students. The panel focused on whether social justice is a gendered issue and how gender issues can be framed within work for social justice.

Today less than three percent of graduating students go into public interest jobs, although many others do public interest work in alternative ways, such as working in private practice and handling pro bono cases. Women continue to express higher levels of interest in “helping others” when entering law school than their male classmates, but their interest appears to equalize with men’s as they move through law school.³ Efforts to increase opportunities for students interested in social justice work include the AALS Equal Justice Project

³ See Amy Bradshaw, Comment, *Exploring Law Students’ Attitudes, Beliefs, and Experiences About the Relationship Between Business Law and Public Interest Law*, 20 WIS. WOMEN’S L.J. 287, 292 (2005); Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law School*, 13 AM. U.J. GENDER SOC. POL’Y & L. 511, 515 (2005).

and the Society of American Law Teachers (“SALT”), which offers several programs each year on social justice. Professor Wildman’s article, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, provides detailed information on how creation of these centers makes this work more visible and accessible and coordinates faculty and institutional social justice work.⁴ The Public Service Loan Forgiveness Program, passed in 2007, allows students to have their law school debt forgiven after ten years of employment in public service as full-time employees.⁵ This program, along with expanded resources at law schools to encourage students to enter public service, will hopefully increase the numbers of students (both men and women) who work in social justice fields.

B. Occupational Segregation in the Legal Academy

This panel consisted of Jo Anne Durako, Rutgers-Camden (now editor of Valley Del Publications); J. Cunyn Gordan, Esq., Eimer Stahl Klevorn & Solberg (now Director, Settlement Assistance Program, Chicago Lawyers Committee for Civil Rights Under Law); Nancy Levit, University of Missouri—Kansas City; Richard K. Neumann, Hofstra University; and Kathryn M. Stanchi, Temple University, with Sue Liemer, Southern Illinois, serving as moderator. Many of the articles from this panel were published as part of the *Symposium: Dismantling Hierarchies in Legal Education*.⁶ Sue also contacted me at the 2003 Annual Meeting to discuss offering a program on how legal writing and research professors are occupationally segregated at most law schools and how most of these professors are women. I was interested in the topic because I entered legal education as the Assistant Director and then Director of the Legal Writing program at the University of Wisconsin Law School, and I had left that position after four years—despite being asked to remain in the job—because I wanted to be on the tenure-track and have full faculty status. I found that opportunity at California Western School of Law and no longer teach legal writing. (Our legal writing professors are not on the tenure-track but have presumptively renewable five-year contracts after a four-year probationary period.)

Much of that panel focused on the difficulties that women have when they enter the legal academy through the legal writing field and the lower status, lower pay, and fewer rights they receive. Unfortunately, legal writing professors continue to have lesser status at law schools. Many law review articles discuss

⁴ Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252, 252 (2005). See also CENTER FOR SOC. JUST. AND PUB. INT., <http://www.law.scu.edu/socialjustice/index.cfm>.

⁵ See Philip G. Schrag & Charles W. Pruet, *Coordinating Loan Repayment Assistance Programs With New Federal Legislation*, 60 J. LEGAL EDUC. 583, 592-94 (2011).

⁶ 73 UMKC L. REV. 231, 231-542 (2004). Nancy Levit’s presentation was based on her article. Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775 (2001).

this ongoing disparity,⁷ and I write about it here with the hopes that the Section will revisit these concerns and renew its efforts to help end sex-segregation in the academy.

As legal education debates the proposals of the American Bar Association's Standards Review Committee ("SRC") to remove references to tenure policies from the Standards for Approval of Law Schools,⁸ those of us who have tenure or are on the tenure-track fear these changes because of the limited job security that may result.⁹ The current proposals would eliminate any reference to tenure throughout the Standards. For example, Standard 405(b) covers most tenure-track and tenured faculty and currently states: "A law school shall have an established and announced policy with respect to academic freedom and tenure" If Standard 405(b) were revised, tenure-track, tenured, and clinical faculty might encounter a professional environment similar to the one that legal writing professors now experience where most have limited or no job security. One of the proposals before the SRC at its July 2011 meeting would require five-year presumptively renewable contracts, the current ABA Standard for clinical faculty members, instead of tenure;¹⁰ the second proposal would eliminate any mention of job security and instead focus on academic freedom.

Compare these proposed revisions to Standard 405(d), which covers legal writing professors and currently states: "A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . , and (2) safeguard academic freedom."¹¹ Interpretation 405-9 currently permits "the use of short-

⁷ See, e.g., Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 UMKC L. REV. 293 (2004); Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383 (2008); Mitchell Nathanson, *Dismantling the "Other": Understanding the Nature and Malleability of Groups in the Legal Writing Professorate's Quest for Equality*, 13 J. LEGAL WRITING INST. 79 (2007); ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, 2011 NATIONAL SURVEY RESULTS, available at <http://www.alwd.org/surveys/2004-2011.html>.

⁸ See AM. BAR ASS'N, 2011-2012 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *Chapter 4: The Faculty* (July 10, 2011), available at www.americanbar.org/groups/legal_education/committees/standards_review.html.

⁹ I have been closely watching this discussion because of having just ended six years of service on the ABA's Accreditation Committee from 2005 to 2011 where we regularly discussed and applied these standards.

¹⁰ Standards and Rules of Procedure for the Approval of Law Schools states that "[a] law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members." ABA Standards and Rules of Procedure for Approval of Law Schools 405(c) (July 10, 2011). Interpretation 405-6 states that "security of position" includes "a program of renewable long-term contracts" which means "at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom." *Id.* at 405-06.

¹¹ *Id.* at 405(d).

term contracts for legal writing teachers.”¹² If Standard 405(b) were revised, tenured and tenure-track professors may finally understand just how difficult it is to work in an environment where job security, separate from protecting academic freedom, does not exist.

Seventy law schools have adopted resolutions opposing the elimination of tenure policies from the Standards, along with numerous organizations such as the AALS, SALT, CLEA, AAUP, and AALL.¹³ The Association of Legal Writing Directors (“ALWD”), in their October 22, 2010, submission, noted that the “elephant in the room” was “whether the ABA standards should continue to empower law schools to openly discriminate against legal writing faculty, who typically lack either security of position or a meaningful role in faculty governance, and who often lack both.”¹⁴

This discrimination against legal writing professors is discrimination against women law professors, because 70% of full-time legal writing faculty members are women.¹⁵ But the Section has not taken a vigorous and ongoing stand against this “discrimination in our midst.” In fact, we often treat legal writing professors as if they were not members, or at least important members, of the Section. During four of the AALS Annual Meetings since 2004, the Section’s programs or meals at the AALS annual meeting have conflicted with the meals or programs of the Legal Research and Writing Section.¹⁶ Instead of sharing our commonalities as women during our national conference, we continue to segregate ourselves between doctrinal faculty and legal writing faculty and force Legal Writing professors to choose which events to attend. At a time when the professional status of all law faculty members is under attack, the Section should adopt the position stated in ALWD’s submission:

¹² *Id.* at 405-09.

¹³ See SOCIETY OF AMERICAN LAW TEACHERS, REPORT FROM THE JULY STANDARDS REVIEW COMMITTEE (July 13, 2011), available at www.saltlaw.org/contents/view/3-2011_ABA.

¹⁴ See Letter from Mary Algero, President, ALWD, to Bucky Askew, Consultant, ABA Section on Legal Educ. & Admission to the Bar 8 (October 22, 2010), available at http://www.americanbar.org/groups/legal_education/committees/standards_review.html at 8.

¹⁵ *Id.* at 8 n.17 (citing the 2010 ALWD/LWI ANNUAL SURVEY, ASS’N OF LEGAL WRITING DIRS. & LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY, 2010 NATIONAL SURVEY RESULTS, available at <http://www.alwd.org/surveys/2010.html> (reporting 697 female and 281 male full-time professors of legal writing); see also *id.* at 7 n.15, 8 n.17 (citing Ann C. McGinley, *Discrimination in Our Midst: Law Schools’ Potential Liability for Employment Practices*, 14 UCLA WOMEN’S L.J. 1 (2005)); SUSAN EHRLICH MARTIN & NANCY C. JURIK, *DOING JUSTICE, DOING GENDER: WOMEN IN LEGAL AND CRIMINAL JUSTICE OCCUPATIONS* 119, 124-25 (2d ed. 2007) (“summarizing research showing that ‘within legal education a new caste system is emerging’ made up of legal writing and clinical skills instructors generally not on tenure track, most of whom are women”).

¹⁶ I understand that the Section, at the request of 2011 Chair Danné Johnson (Oklahoma City), asked that our events not conflict with the Legal Research and Writing Section’s events at the 2012 Annual Meeting and Kathy Stanchi raised the same issue as invitations for panelists were distributed this year.

ALWD encourages SRC to adopt standards that protect and guarantee academic freedom and equal governance rights for all faculty, regardless of title, field of study, or administrative duties. Job security, academic freedom, and a role in faculty governance are not just hypothetical ideals—they are necessary guarantees for all faculty if the ABA is serious about achieving meaningful curriculum reform.¹⁷

As women who have struggled to have our voices heard within our own faculties and within legal education and the legal profession as a whole, we must work towards ending the structural distinctions that permit discrimination against large numbers of our women colleagues.

IV. CONCLUSION

My involvement with the Women in Legal Education Section has been an important part of being a law professor. In the Women's Section, I found like-minded people who are concerned with making women law professors more comfortable in our male-dominated profession and working together to improve the situation for the women who follow behind us. Having a safe place to connect has improved my career and reminds me of the importance of continuing to be involved so other women will find the help that I obtained. Even though the Section continues to grow and thrive, we must all participate to keep the focus of the AALS and legal education on being a welcoming place for women law professors.

¹⁷ Algero, *supra* note 14, at 10 n.111. The ALWD connected the importance of protecting these attributes of our professional environment, especially since the Standards are starting to focus more on skills training, formative assessment, and outcome measures, all aspects of legal education on which most Legal Writing Professors regularly focus.

