



EQUAL RIGHTS ADVOCATES

CREATING GENDER EQUITY IN ACADEMIA *EQUAL RIGHTS ADVOCATES' HIGHER EDUCATION LEGAL ADVOCACY PROJECT ROUNDTABLE REPORT*

INTRODUCTION

On February 1, 2003, Equal Rights Advocates' Higher Education Legal Advocacy Project convened a meeting of academics, lawyers and representatives of public interest organizations from around the country at Mills College in Oakland, California. The purpose of the roundtable was to identify continuing barriers to the advancement of women, analyze past efforts to address these barriers and develop strategies for future work.

ROUNDTABLE BACKGROUND

A generation after the enactment of civil rights laws, and the entry of women into academic institutions in significant numbers, female faculty continue to lag behind their male counterparts. Thirty years later, the "pipeline problem," as it was then called, has not been solved. Indeed, the current metaphor for the status of women in academic institutions is a badly leaking pipeline.

Reviewing the history of women in academic employment, a puzzling phenomenon emerges. While women have embraced academic opportunity, and the numbers of women obtaining Ph.D.'s in all fields has increased dramatically, their distribution within faculty and administrative ranks of colleges and universities is not proportional to their availability in the labor pool. Women in academia are clustered in the ranks of part-time, non-tenured faculty and staff positions. Women are underrepresented among the ranks of tenure-track, tenured and senior administrative level faculty.

ERA convened the roundtable in order to better understand the causes of this phenomenon and to help identify strategies, legal and otherwise, to address it.

ISSUE IDENTIFICATION: CONTINUING BARRIERS TO THE ADVANCEMENT OF WOMEN

Three groups, consisting of fifteen participants each, discussed ongoing efforts to promote gender equity, and generated a list of issues for consideration by the larger group. The following issues were presented:

- **Problem: Women are not being hired in proportion to their availability in the relevant labor pool. Steps need to be taken to increase the number of women hired into tenure-track, tenured and high level administrative positions.**

There is a pressing need for institutions of higher learning to increase their hiring, promotion and retention of women and women of color. Female Ph.D. recipients are not hired in proportion to their availability in the relevant labor pool into tenure-track and tenured positions. Departmental search committees established to hire for tenure-track positions tend to use "old boy" networks, and do not engage in sufficient outreach to create applicant pools that mirror availability. As a result, women are disproportionately tracked into second-tier positions within the institution, as adjuncts, part-time faculty and limited term instructors. Furthermore, those

who do gain admittance to the tenure-track typically are neither groomed for nor promoted to administrative positions of power and influence within the institution.

To a great extent, this underutilization of the diverse talent trained by the university is a function of two types of institutional failure. First, universities must insist that “search” committees engage in outreach sufficient to create applicant pools that mirror the availability of Ph.D. recipients. Second, there must be meaningful oversight of the hiring and promotion process, and departments that consistently “find” white males to fill vacant positions should be held accountable for their failure to diversify their faculty commensurate with the available workforce.

- **Problem: Women faculty are disproportionately burdened with mentoring and advising responsibilities. Steps need to be taken either to reduce excessive burdens placed upon women and women of color, or to change the reward structure to acknowledge the importance of these contribution to the institution.**

Both as a result of their relative scarcity among the faculty, and because of stereotypical notions about women as nurturers, female faculty face expectations that may interfere with their professional advancement. Students and colleagues often expect women to perform nurturing/mentoring activities not expected of their male colleagues. Department chairs and deans demand their presence on committees and task forces that consider diversity questions or require diversity for credibility. Yet they typically do not receive credit for this institutional “women’s work” – neither teaching demands nor tenure requirements are adjusted to acknowledge and mitigate the negative impact of these demands on their scholarly productivity.

Women of color, who face the double burden of obligation to address the unmet institutional needs of both women and members of their racial/ethnic group, are particularly affected by the failure to address this problem. Responding to excessive institutional demands adversely affects women’s

ability to perform on the more traditional measures of research and scholarship, making their retention and ultimate success within the traditional reward structure less likely. These additional and unrewarded requirements perpetuate the underrepresentation of minority women and men in the academy.

- **Problem: Sporadic efforts to create gender equity do not work. Steps need to be taken to institutionalize and perpetuate practices that promote gender equity in order to reduce the likelihood of backlash and backsliding.**

Over the years, many institutions have undertaken equity reviews of the compensation of male and female faculty, and have attempted to redress disparities with varying degrees of success. Unfortunately, these tend to be one-time events that consume enormous resources, create a certain amount of institutional havoc while they are taking place, and then generate resentments that result in backlash and a gradual return to practices that recreate the problem. To insure that efforts at gender equity are sustainable, oversight structures need to be institutionalized, and regularly scheduled reviews with meaningful consequences for department-level and college-level decision-makers are necessary to maintain accountability.

- **Problem: Lack of clarity about the criteria for advancement and lack of transparency in the decision-making process lead to inequitable application of standards. Steps need to be taken to ensure that standards are equitably applied and that there is sufficient protection within the evaluation process to prevent taint by unconscious bias or intentional discrimination.**

Women who are hired into tenure-track positions are frequently disadvantaged by the lack of transparency in institutional decision-making. They may lack information as to how the standards will be applied, powerful mentors to shepherd them through the process, and ‘friends in high places’ to go to bat for them when they are subjected to gender stereotyping, bias and/or procedural irregularity. It is extremely important that institutional leadership

create mechanisms to insure that the criteria for advancement are clear, fairly applied and not infected by gender stereotyping, bias or intentional discrimination.

- **Problem: Characterizing women’s family responsibilities as career distractions that signal lack of commitment hinders their ability to succeed. Steps need to be taken to accommodate and integrate women’s family responsibilities into cultural expectations about what a normative academic career trajectory looks like.**

Many academicians harbor stereotypes about the ideal worker and hold cultural assumptions about the normative career trajectory that do not accommodate women’s family obligations. University leadership must take steps to address cultural assumptions and stereotypes that disadvantage women, to revise thinking about how an academic career trajectory can coexist with family obligations, and to create structures that facilitate work and family balance. These include: creation and wide dissemination of automatic leave, modified duty, stopping-the-tenure-clock policies (for both sexes), provision of centralized funding to cover departmental costs, monitoring the use of policies by junior faculty, and taking aggressive steps to prevent retaliation against those who take advantage of the programs offered.

- **Problem: Insufficient attention has been paid to cultural and environmental factors that make some departments hostile environments for women. Steps need to be taken to address cultural and environmental factors that discourage women from pursuing academic careers.**

As relative newcomers to academia, women suffer from a host of adverse cultural and environmental factors, including negative stereotypes about capability, sexual harassment, overt and subtle discrimination, and micro-inequities that accumulate over time to create huge disparities between men and women as they advance in their careers. These issues are particularly prevalent for women in science, math, engineering and technology. A culture of hostile aggression and individualism that pervades some departments creates the phenomenon of

qualified women “voting with their feet” and choosing to leave academia for work environments that encourage a more collaborative work style and greater opportunity for work/family balance.

University leadership must make department chairs, and other decision-makers accountable for creating an environment conducive to achieving gender equity and diversity by creating effective mechanisms for women to voice their dissatisfaction and by committing resources to make changes that will create a more welcoming environment for women.

INNOVATIVE STRATEGIES FOR INSTITUTIONAL CHANGE

Several roundtable participants presented brief reports of activities that involved innovative strategies for pressuring institutions to improve gender equity in hiring and advancement. Following each report, large group discussion of the ideas presented placed them in historical context and considered how they would fare in the current political climate. The reports are summarized briefly below:

- **Using a federal agency to investigate systemic bias.**

Attorneys Kay Lucas and Karen Sawislak reported on the activities of the Stanford Coalition on Gender Equity. The Coalition was formed by a group of women faculty and senior staff from different disciplines, who began informally to gather data and eventually to create and publicly release a report of systemic gender bias at Stanford. After considering the pros and cons of undertaking individual cases (the prospect of individual relief, weighed against judicial hostility, fear of retaliation and concern that the expenditure of resources would be disproportionate to results achieved), the women decided to take collective rather than individual action.

A complaint was then filed with the Department of Labor under the Executive Order Program (Executive Order 11246). The investigation has been ongoing for years, and has been kept alive through

the strategic filing of a new complaint with the DOL every few months. Although to date there has been no “final resolution” of the matter, the Stanford women believe that the external pressure created by the investigation has been responsible for an increase in the number of women hired, and has had a positive effect on some challenged tenure decisions.

- **Using a legislative audit and hearings to publicize institutional backsliding.**

After California voters enacted Proposition 209 (outlawing so called “preferences” based on race and gender except as required by federal law), there was a dramatic downturn in the hiring of women within the University of California system. As a result of the fact that federal affirmative action requirements were being overridden and that the gains of previous years were being erased, California State Senator Jackie Speier, Chair of the Senate Select Committee on Government Oversight, called for an audit of the entire University of California system.

The audit demonstrated that the University of California had utterly failed to hire women into tenured and tenure-track positions in proportion to their availability in the relevant labor pools. Worse, at a time of increased hiring due to retirements and campus expansion, the university was not hiring women at a rate necessary to achieve gender parity at any time in the foreseeable future. Following the audit, Senator Speier held an unprecedented three hearings over three years on UC hiring practices, at which she took testimony from faculty and members of the administration analyzing the causes of the hiring disparity and the efforts needed to fix the problem. These efforts were supported by an informal statewide group of faculty (California Academics for Equity) spearheaded by UC Davis professors Gyongy Laky and Martha West.

The result of this legislative attention has been mixed. As a result of the audit and the hearings, the University President has been forced to publicly concede to the reality of the problem. He also convened a women’s summit and instituted system-wide policies that could have a positive effect on gender equity (e.g., centralized funding for family leave). However, because the University of California governance is fairly decentralized, some

campuses have been more responsive than others to the need to increase the number of tenured and tenure-track women. While increased scrutiny resulted in some increase in the hiring of women, the numbers still have not returned to pre-Proposition 209 levels. Furthermore, the disparity is greater because there are more women available in the labor pool.

Senator Speier has announced her intention to continue placing a public spotlight on this issue. While the women responsible for putting these hearings together have done an impressive organizing job without staff and without the official sanction of the University (no small feat in a statewide multi-campus system), there is a critical need for financial and staff support to enable them to continue the effort.

- **Using individual cases to create increased opportunities for minority academics.**

Professor Juana Mora discussed her own case against California State University Northridge and that of Professor Rudy Acuña against the University of California Santa Barbara. Professor Acuña’s race and age discrimination suit became a vehicle to organize and educate the general public about discrimination that Latinos and Latinas face in academia. As a result, he received widespread community support. After winning a jury trial on the basis of age discrimination, he established the For Chicana/Chicano Studies Foundation, which has provided financial support to other Latinas and Latinos challenging employment discrimination in higher education, including Professor Mora.

Professor Mora applied for the position of Associate Dean of the College of Humanities. Despite her superior qualifications (including a stint as acting dean), she was not interviewed for the position. She sued the University, and while she did not receive the position (which went to a Latino male), she received significant financial compensation, including research funding. She also sought to create a Chicano Studies Institute. Although she did not succeed in that endeavor, she believes that the pressure her case placed on the institution resulted in the creation of a significant

number of new faculty positions available to minority faculty.

- **Using Congressional oversight to increase opportunities for women in science.**

Dr. Debra Rolison, a scientist with the Naval Research Laboratory, reported on the disparity between the numbers of women getting Ph.D.s in math and science and their presence in academic institutions. In science, there is not just a “leaky pipeline” of women; there is an actual “brain drain.” Her analysis led her to conclude that women were “voting with their feet” in reaction to what they see in graduate school, e.g., discrimination, a competitive culture hostile to the idea of science as a collaborative enterprise, an “alpha shark” reward system based on those who dominate a research area and whose projects bring in the most money, an absence of true mentoring, and a failure to address work/family issues.

Rolison’s proposed solution to these problems is to use Congressional pressure and the threat of withholding of federal funds through a Title IX enforcement proceeding to redress discrimination. Forming alliances with Congressional staff is a way to bring national attention to these issues. Congress now views the lack of American scientists available for careers in science and technology as a national security issue. Therefore, Congress may be more receptive to the idea of withholding federal funds from institutions that do not incorporate on their faculties the female talent trained in the STEM (science, technology, engineering, and mathematics) disciplines. Congressional oversight may also be achieved using the reauthorization bill for the National Science Foundation that included a requirement for studies relating to gender equity on science faculties and in U.S. funded research and development projects.

- **Using research to illuminate and counter the negative effect of women’s family responsibilities on academic careers.**

U.C. Berkeley’s Mary Ann Mason reported the results of a longitudinal study of all Ph.D. recipients in the United States between 1978 and 1985. Her findings, published in the monograph “Do Babies

Matter?”, demonstrate that women with “early babies,” defined as within 5 years of receipt of a

Ph.D., suffer negative career effects, whereas men with “early babies” show a career advantage. In her role as Dean of the Graduate Division, Mason has worked to implement policies to mitigate the negative effects of motherhood, and has challenged career trajectory assumptions that disadvantage women with families. Her research lends credibility to her efforts to change the culture and structure of academic employment.

Washington College of Law Professor Joan Williams, who directs the Program on Gender, Work and Family at American University, gave a brief summary of laws and legal theories that are available to obtain redress for parents who have suffered adverse career consequences as a result of caregiving responsibilities. She then presented research on cultural stereotyping to demonstrate that the “maternal wall” stops mothers before they can get to the “glass ceiling.” When women become mothers, traditional female role stereotypes collide with professional role expectations, creating “role incongruity.” As a result, performance evaluations fall, and the woman’s career commitment is seen as suspect. In academia, this phenomenon is exacerbated by the persistent myth, based on the male model, that academics are most creative in their youth, during which time they should demonstrate single-minded devotion to career. To succeed in academia, women with families need to overcome these stereotypes and deeply held cultural assumptions.

A SOBERING REALITY: THE LACK OF INFRASTRUCTURE IMPERILS GENDER EQUITY EFFORTS

The final roundtable discussion developed a theme that was implicit throughout the day, namely that academic women must create the resources necessary to sustain and increase gender equity efforts in institutions of higher learning. Women in academia currently lack an infrastructure for national communication and mutual support. They lack resources to collect, maintain and disseminate

pertinent data, research findings and other information to support gender equity efforts. Women lack effective avenues to promote public education and awareness of the need for continued vigilance around gender equity issues. Women lack the financial and staff resources to organize collective support for women's issues within their home institutions. Unless these needs are addressed, they will be unable to maintain, much less increase, the power and influence of women in academia.

This dilemma seems paradoxical. On the one hand, the profile of women's issues has never been higher. Newspapers are full of articles on work/family balance. Recent attempts to undermine Title IX enforcement in athletics received wide play in the national media, as did MIT's high profile efforts to address gender inequity concerns raised by its senior women faculty. Many academic institutions have taken steps to establish "status of women" committees, conduct climate surveys and seek advice from senior women on changes that are needed.

On the other hand, success in translating media attention into sustainable change is by no means assured. Recent history demonstrates that political backlash, in the form of measures such as California's Proposition 209 or the more recent Racial Privacy Initiative, can have an immediate and devastating effect on efforts to increase the diversity in the applicant pool for academic jobs. Furthermore, they threaten the ability to track the progress of these efforts.

In addition, the pioneering generation of women who first "integrated" the universities is now on the verge of retirement. For example, at the University of California, hiring rates for women are below pre-Proposition 209 rates at a time when retirement and campus expansion have created a hiring surge. If women are not hired in significant numbers during this period, it will affect the composition of the university for generations to come. This phenomenon is repeated at institutions around the country. To preserve and create gender equity in the future, organizing and education are of paramount importance now.

IDEAS FOR ACTION TO PROMOTE GENDER EQUITY

The following ideas were generated as strategies to promote gender equity:

- **Create an infrastructure to ensure that meaningful, timely data about the status of women is readily available in a form that permits appropriate comparisons with similarly situated male academics.**

Statistical data and scientific research are critical tools in the struggle for gender equity. Currently, accurate, timely and appropriate data about the status of women in colleges and universities is often unavailable or hard to come by. This data may exist, but is either not readily available to the public or if publicly available (e.g., on a university website) is not in a form that permits useful comparisons between departments and institutions (e.g., not distinguishing tenure-track hires from others). Data collected by government sources may suddenly disappear in response to political pressure. Data collected by individual researchers may be known only to a select few in their field.

Data is critical for the following purposes, to influence those with power in the affected institution to support change; to create a positive social climate for change in the wider community (make it accessible and interesting to the media/public); to bring about external review of institutions (federal agency investigation, legislative oversight, court action); to create benchmarks for progress; and to prove the existence of discrimination.

Creation and maintenance of an infrastructure to collect and disseminate research and data would vastly enhance organizing and education efforts. Ideally, to ensure objectivity, a centralized database would be located and maintained by an appropriate nonprofit organization, outside of the confines of any particular university or government entity.

- **Create a public education/media campaign to inform the younger generation of scholars, the wider public and the judiciary about the history and persistence of gender inequity in academic institutions, and past and present efforts to overcome the effects of discrimination and bias.**

Younger scholars and the public may believe that the “problem” of women in universities is already solved. Making them aware of the history of women’s struggle for inclusion in the recent past, and ongoing efforts to overcome gender bias and promote equity in the present, can create allies and promote vigilance against backlash. Judges are reluctant to second-guess employment decisions in the academic context. Educating the judiciary to recognize subtle mechanisms for perpetuating gender bias in academia is necessary to help victims of discrimination obtain redress.

Creation of a working group to provide media training and to develop a strategic plan for public and judicial education would enhance awareness of the issues.

- **Create strategic alliances and seek leadership opportunities.**

Forming strategic alliances with other women on campus, with other groups working for diversity, with like-minded colleagues, with representatives of the media, with Congressional staff, with state legislators, with alumni, and with regents/trustees will enhance the power of female academics to create favorable climate change within the institution. In addition, these alliances may provide financial resources (e.g., money, staff, administrative support) and political clout within the institution.

Seeking leadership opportunities will, in the short run, develop the political sophistication necessary to overcome resistance to change within one’s home institution, and, in the long run, increase the pool of women available for appointment to leadership positions as they arise. Women who are active participants in faculty governance can hold positions that permit them to change the reward structure, rewrite tenure standards and create a climate that is more hospitable to women and minorities.

EQUAL RIGHTS ADVOCATES’ ROLE: OPPORTUNITIES FOR LEGAL ADVOCACY

The roundtable provided ERA’s Higher Education Legal Advocacy Project with an opportunity to consider how legal advocacy could best support efforts to create sustainable gender equity in colleges and universities. Reflecting on the wealth of ideas presented at the roundtable, ERA has identified the following areas for potential case development:

- **Leaky pipeline issues, especially in STEM disciplines.**

Women are not hired into tenure-track positions, tenured, promoted or rewarded in proportion to their availability in the relevant labor pool, particularly in the areas of science, technology, engineering and math (the STEM disciplines). Institutional indifference to demonstrated, ongoing disproportionate hiring of white males may be challenged under state and federal law.

- **Sexual harassment**

Too often, promising young women get sidetracked at the outset of their academic careers by sexual harassment perpetrated by faculty members who have power over their professional future. Institutions that fail to provide adequate protection against sexual harassment and/or fail to adequately protect victims who bring complaints of sexual harassment may be challenged under state and federal antidiscrimination laws.

- **Family/work balance**

Women’s advancement is impeded when they are denied tenure as a result of availing themselves of “stop-the-tenure-clock” policies in order to have families. Institutions that fail to provide appropriate resources to accommodate family responsibilities and/or fail to protect women who take leaves from retaliation may be challenged under state and federal law.

- **Women of color**

Women of color face bias due to race and gender. Their teaching evaluations may be adversely affected by negative stereotypes, and their scholarly research, if it directly relates to communities of color, may be undervalued. In addition, as a relatively scarce resource within the institution, women of color are called upon disproportionately to mentor and to tend to the needs of minority students. Yet this institutional service work is not rewarded. To the contrary, too often this extra work undermines their academic careers. These disadvantages may be challenged as “sex plus” discrimination under state and federal employment discrimination laws.

- **Subtle discrimination**

Discrimination in academic employment is difficult to address through the legal system for a number of interrelated reasons, including judicial deference to academic institutions (reluctance to inquire too deeply into academic judgments of scholarly ability), the decentralized decision-making structure of academic employment (multiple levels of review obscure illegal behavior and make it harder to demonstrate required elements of “intentional discrimination”) and the use of summary proceedings to decide cases before trial. Educating the judiciary to appreciate the significance of procedural irregularities and gender stereotyping behavior in evaluating academic employment discrimination cases may be accomplished by appellate advocacy and the development of judicial education program material.

ACKNOWLEDGMENTS

ERA gratefully acknowledges the Ford Foundation for its financial support, and the participants in the Higher Education Roundtable for their ongoing commitment to achieving gender equity in academia and their valuable insights.

The following individuals were participants in the roundtable:

Professor Alice Agogino
University of California, Berkeley

Dr. Jessica Agramonte
Stanford University

Professor Marina Angel
Temple University School of Law

Dr. Mary Burgan
American Association of University Professors

Professor Patricia A. Cain
University of Iowa, College of Law

Nancy O’Mara Ezold
Nancy O’Mara Ezold, PC

Nina Fendel
California Faculty Association

Dr. Hilda Hernandez-Gravelle
Conference Consultant/Facilitator

Amy Houghton
American Association of University Women

Dr. Alice Huang
California Institute of Technology

Jean K. Hyams
Boxer & Gerson

Professor Herma Hill Kay
University of California (Boalt Hall)

Professor Linda Krieger
University of California (Boalt Hall)

Professor Gyöngy Laky
University of California, Davis

Leslie Levy
Boxer & Gerson

(continued on next page)

Professor Jean Love
University of Iowa, College of Law

Kathleen Lucas
The Lucas Law Firm

Professor Shauna Marshall
University of California (Hastings)

Graduate Dean Mary Ann Mason
University of California, Berkeley

Professor Martha Mecartney
University of California, Irvine

Professor Juana Mora
California State University, Northridge

Professor Radhika Rao
University of California (Hastings)

Professor Judith Resnik
Yale Law School

Professor Deborah L. Rhode
Stanford Law School

Dr. Debra Rolison
Naval Research Laboratory

Dr. Bernice R. Sandler
Women's Research and Education Institute

Karen Sawislak
Law Offices of James Eggleston

Professor Elaine W. Shoben
University of Illinois College of Law

Professor Marjorie M. Shultz
University of California (Boalt Hall)

Associate Vice Provost Angelica Stacy
University of California, Berkeley

Laura Stevens
Law Offices of Laura Stevens

Professor Myra H. Strober
Stanford University

Professor Eleanor Swift
University of California (Boalt Hall)

Professor Barrie Thorne
University of California, Berkeley

Dr. Cathy Trower
Harvard Graduate School of Education

Professor Virginia Valian
Hunter College-CUNY

Professor Martha West
University of California, Davis (King Hall)

Professor Joan Williams
Washington College of Law

ERA STAFF

Irma D. Herrera
Executive Director

Charlotte Fishman
Director, Higher Education Legal Advocacy Project

Debra A. Smith
Staff Attorney