

The Rocky Road to the Ivory Tower

By Ann Farmer

Whether a woman lawyer heads for the skyscraper canyons of Wall Street to practice law or decamps to an ivy-covered college campus to teach law, she may discover that these contrasting settings can function rather similarly on the inside.

Back in the 1980s, while still in the expectant throes of earning her law degree, Sue Liemer recalls being told that it was only a matter of time before women advanced through the leadership pipeline to where they would be equally represented alongside men as partners in law firms and tenured law professors.

“That hasn’t happened,” says Liemer, who achieved tenure as an associate professor and director of lawyering skills at Southern Illinois University School of Law only after working at two other law schools for a total of 10 years in nontenured, full-time positions. She notes that, for more than a decade, women have emerged as approximately 50 percent of all law school graduates. “But certainly half of the partners at law firms aren’t female,” she says. “And half of the tenured professors at law schools aren’t female.”

Instead, a shift has taken place in which law school administrators are relying more on contract and adjunct faculty to teach courses and are hiring fewer tenure-track faculty. “It used to be that most of the faculty were on a tenure track,” says Jana Singer, a tenured professor who teaches constitutional law and family law at the University of Maryland School of Law. “Now, as more and more women have entered law teaching, law schools are depending more and more on nontenure-track teachers,” she points out.

This trend is contributing to a situation in which women disproportionately occupy the nontenured positions on law school faculties. The most recent statistics compiled by the Association of American Law Schools (AALS) show that women were 55 percent of all nontenure-track full professors during the 2004–05 school year. Women were also overrepresent-

ed among non-tenure-track associate professors (62%), contract assistant professors (65%), and lecturers and instructors (66%). At the same time, women were only 25 percent of tenured full professors.

The Pink Ghetto

“Some people call it the pink ghetto,” says Laura T. Kessler, associate professor at the S.J. Quinney College of Law at the University of Utah, describing what she sees as a sort of job segregation that’s taken hold on many law school campuses.

Kessler teaches employment discrimination law and other courses, and says legal academia is bifurcated between the good jobs and the less-desirable jobs—the former naturally being the tenured or tenure-track jobs held by deans, full professors, associate professors, and assistant professors. These positions offer prestige, good salaries, job security, power, and greater autonomy, Kessler says.

Then there are nontenure-track, contractual positions—which include full-time legal writing instructors, many clinical professors, and academic support personnel such as librarians. These provide lower salaries, less security, less prestige, and less overall job trimmings.

Liemer points out that these positions are more often filled by women and come with an onerous degree of what she describes as “handmaiden’s work,” such as grading papers and serving as ad hoc counselors to students. While this work can be rewarding, she says it also can be time consuming and take away from scholarship or other responsibilities.

“Women get that disproportionately,” Liemer says. “A lot of this work is the unseen work. It’s equivalent to the housewife’s work,” she adds, referring, for instance, to how legal writing instructors have to assume the painstaking burden of cleaning up students’ writing so that it doesn’t become an issue for professors teaching more advanced courses. “It’s a lot of hours of work that are

not acknowledged,” she says. “And certainly it’s not highly valued the way scholarship is.”

Elizabeth M. Schneider, the Rose L. Hoffer Professor of Law at Brooklyn Law School in New York and a national expert on gender and the law, also contends that gender bias problems or subtle problems of gender still very much exist in academia.

“I think there are still fewer women on law faculties than there should be,” she observes. “There are still fewer female deans than there should be. I think there can often be subtle sexism in student evaluations of faculty. There can be devaluation of fields in which some women may be interested,” Schneider adds, describing a phenomenon, similar to observations made by Liemer and Kessler, in which certain labor-intensive positions, like clinical teachers, are viewed as women’s work.

Schneider also points out that areas like family law are routinely considered a woman’s domain. She says, “Fewer women are teaching in areas of law that are traditionally viewed as more prestigious,” such as constitutional law and civil procedure.

Tenure-Track Hurdles

Speaking at the AALS annual meeting, held in Washington, D.C., in early January, Marina Angel, a feminist law professor at Philadelphia’s Temple University James E. Beasley School of Law, went so far as to say there are strong indicators that the tenure-track positions appear to be reverting back to being a white-male enclave. “Women of all colors are being steered to lower-paying, lower-status, less-secure contract and at-will positions,” she said.

While similarly faulting the changing organizational structure of law schools that is resulting in fewer tenure-track positions, Angel pointed out that women often find it more difficult than men to fulfill their tenure requirements while raising a family. “Women traditionally disap-

pear from the tenure track in substantially higher numbers and percentages than do men,” she said, explaining that male academics can often rely on their wives to manage home and family responsibilities. “Most of us can’t find a stay-at-home or part-time husband to perform similar caretaking responsibilities,” she added.

To attain tenure, candidates are expected to excel in (1) teaching, (2) scholarship (e.g., research and publishing), and (3) providing service to the institution and community. That could refer to pro bono work or

Administrators are relying more on contract and adjunct faculty and are hiring fewer tenure-track faculty.

“serving on a board of a nonprofit,” explains Kessler, who was unanimously recommended for tenure by her law school faculty in December.

Tenure-track candidates are given approximately five years to prove themselves worthy. However, Kessler says, “It just so happens that the five years correspond largely with women’s biological clocks,” explaining that women commonly get tenure-track positions in their late 20s and early 30s, which tends to coincide with prime childbearing years.

These days, many law schools allow women to delay their tenure time clock by one year if they give birth to or adopt a child. Some even allow them to extend the timetable a second time with a second child. But the downside to taking that extra time is that sometimes it creates greater expectations. For instance, “because you had an extra year, there may be a perception that you should

have done more,” Kessler says. “It might not be as helpful as it looks.”

Women lawyers on partner track in law firms experience a similar timing snafu. It generally takes nine to twelve years to achieve junior or nonequity partner, and an additional three to five years to achieve equity partner in large law firms. Therefore, Angel noted at the AALS meeting, “A young woman finishing law school at 25 can aspire to junior partnership at 35 and equity partnership at 40. . . . With the expectation of 2,000-plus billable hours, she did not have time to find a partner, conceive, give birth, and bond with her child.”

And they face additional obstacles to becoming partner. For instance, women lawyers are more likely to be foreclosed from challenging assignments and from forging the informal mentoring relationships that make it easier to advance, says Deborah Rhode, the Ernest W. McFarland Professor of Law at Stanford Law School and director of the Stanford Center on Ethics. “It happens a lot with regard to client development opportunities,” she says. “Men are still channeling the most exciting and intellectually challenging assignments to other men with whom they feel comfortable and who they think are committed and reliable.”

Rhode adds that male cronyism is somewhat less prevalent with academics, especially because the pressure to be a rainmaker doesn’t exist. “But still,” she says, “when it comes to picking people to be coauthors, panelists at important conferences, and committee chairs—you know, things that carry academic prestige—I think men often favor those with whom they have formed particular bonds.”

Citing the Commission’s recent study, *Visible Invisibility: Women of Color in Law Firms*, Rhode adds that women lawyers of color are up against even greater bias and burdens of proof, especially in allaying skepticism “that they may have achieved their success due to special treatment rather than merit.”

When Rhode joined the Stanford Law School faculty in the late 1970s, she was only the second woman to do so. She had graduated summa cum laude from Yale University and attended Yale Law School, where she was awarded the Peres and Egger prizes for her outstanding contributions to the *Yale Law Journal*. Despite her impressive accomplishments, she recalls being nervous about her final review for tenure. “I certainly felt a great deal of pressure and anxiety with regard

to the tenure decision,” she says. “The standards are highly subjective.”

Only tenured faculty routinely vote on who gets tenure, and Rhode recalls an extensive process that involved peer reviews, student reviews, and her own final accounting of her progress and plans. “It’s still done that way,” she says, although tenure-track faculty today tend to receive more support and feedback if they begin to flounder. In that regard, “it’s very different,” she says. “When I went through, there was a lot less mentoring and a lot more sink or swim.”

Some people say the requirements for a tenure-track position have become even more rigorous of late. Schneider notes that, in addition to doing well in law school, establishing good mentor relationships, and completing a traditional clerkship, aspirants are often expected to have gotten one or two law review articles published before they begin teaching. “And even more onerous,” she adds, “they look for joint PhDs and law degrees. The whole process has changed—in some ways that are problematic.”

Bright Spots

But despite all these obstacles and challenges, there’s no denying that substantial progress has been made. Judith Areen, former dean of Georgetown University Law Center and the Paul Regis Dean Professor of Law, recalls when she was hired as only the second woman on Georgetown’s faculty. Today at Georgetown, she says, “Women are tenured at the same rate proportionally to men.”

However, Areen cautions that change doesn’t just happen. “You need to make the effort,” she says, citing, for example, the Women Deans’ Databank that was initiated in 1997 at Georgetown and is now administered by the AALS to promote the visibility of women candidates interested in serving as deans of law schools. Although 19 percent may sound like a paltry percentage of

Stats Tell the Story at Law Schools

For the 2004–2005 academic year, women comprised

- 25% of tenured full professors
- 46% of tenure-track assistant professors
- 55% of contract full professors
- 62% of contract associate professors
- 65% of contract assistant professors
- 66% of lecturers and instructors
- 19% of deans
- 35% of associate deans with professional titles
- 54% of associate deans without professional titles
- 68% of assistant deans without professional titles

Source: Association of American Law Schools, “Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2004–05,” Revised Tables, http://aals.org/documents/statistics/Report_tables_0405.pdf.

female deans, that's twice as many as a decade ago, she notes.

Karen H. Rothenberg, who is the first female dean at the University of Maryland School of Law, also recalls when she was the only woman on the faculty or one of the only two. "When I came here, it was very lonely to be a woman," she says. In fact, she hadn't considered a career in academia until she received a call in 1983 at her Washington, D.C., law firm of Covington & Burling LLP from someone who convinced her to visit the Baltimore campus. She saw working in academia as an opportunity to accomplish what has become one of her proudest feats—founding the Law and Health Care Program, which *U.S. News & World Report* has consistently rated as one of the top five specialty programs within the nation's best law schools.

Now, Rothenberg points out, almost 50 percent of her law school's full-time teachers (contract, tenured, and tenure-track) are women, with a large portion of them running major committees. "My style is collaborative and cooperative, and it signals that this is a place that's committed to the success of women and men," she says.

With a more critical mass of women teaching today, legal education has undergone changes. "Teaching styles in general have changed," says Singer, describing them as broader and less confrontational. The image of a "towering, sarcastic figure in the classroom" has become outdated, she notes. "It's not my teaching style and it's not the style of many women (or men)."

Sometimes, though, things happen in the classroom that can be potentially interpreted as sexist. Kessler once had a first-year student raise his hand during the first 10 minutes of the first day of class and say, "This is not the way we're supposed to be learning civil procedure," Kessler recalls. "I don't know if he would have said that to a man."

Recent research on gender bias and teaching evaluations indicates that

Association of American Law Schools Women and Minority Deans' Databank

Request for nominations:

In an effort to promote the visibility of women and minority candidates interested in serving as deans of law schools, the Association of American Law Schools administers two databanks utilized by dean search committees.

To learn more about how to nominate a candidate, go to http://aals.org/services_databanks.php.

some students, in fact, may judge and evaluate women teachers more harshly than their male counterparts. And this charged topic will be under consideration by the AALS Section on Women in Legal Education when they convene in a plenary session during the next AALS annual meeting.

The Right Fit

A large percentage of women (and men) lawyers enter academia after a stint in private practice. After completing her J.D. at Yale Law School, Singer clerked for Judge Richard D. Cudahy of the U.S. Court of Appeals for the Seventh Circuit and then worked as a litigation associate at the Washington, D.C., law firm of Wilmer, Cutler & Pickering. But she didn't particularly care for the adversarial aspect of litigation. "I could always see the other side," Singer says. "I was always more interested in the implications of the issues than in making sure that our side won." At the same time, she notes, "I always felt that I might want to teach. I loved law school. A common theme among academics is that they love law school. I saw teaching as a good fit."

Similarly, when Kessler initially worked as a civil rights lawyer for the Maryland ACLU and the Maryland Disability Law Center, she says she often felt that in litigation, she was constrained in looking at the nuances of things. She explains: "Essentially you had to go into a court and tell a story in which you were right and the other side was wrong. It was hard within the adver-

serial process to fashion policies and solutions to problems that take into account the gray areas. I like looking at complexity."

Another major upside to a tenure track position is that it provides the opportunity to focus on those nuances and gray areas. It necessitates scholarly work about important issues to be completed in a timely manner. Although, as an aside, Kessler says there's a misconception that academics have more time on their hands than those in private practice. "Your time is incredibly unbounded," she explains. "If you're a litigator, things will heat up, you can have a big trial or a motion, and you'll be sleeping at work for a month or two. But then it will ideally back off and you can have a little bit more regular time. But if you're a law professor, there are very high standards for producing scholarship and, unless you set your own limits, they will never be imposed by the institution."

Liemer cautions that senior faculty sometimes have no qualms about telling junior faculty what they should be writing about. "Junior faculty are often counseled not to write about controversial things before they get tenure," she notes. "And that's difficult for a junior faculty member because you're trying to fill gaps in the literature and you're trying to contribute to the literature in your field."

She didn't play it safe when she researched and wrote about which nontenured, full-time clinical, library, and legal writing faculty members at

(Continued on page 14)

THE ROCKY ROAD

(Continued from page 7)

law schools get to vote at faculty meetings and which don't. "When you look around the room," she says, "you see that the ones who don't get to vote are disproportionately female." For her efforts, Liemer experienced the satisfaction of hearing that the Council of the ABA Section of Legal Education & Admissions to the Bar reviewed her published report when it was reexamining its Standard 405(c) regarding the matter of voting rights.

Liemer is one of countless women academics who have chosen gender-specific topics and issues, such as domestic violence, workplace discrimination, family leave, and sexual harassment, for their scholarly work. Early in her career, for instance, Singer wrote quite a bit about the financial consequences of divorce on

women. Her articles were published in the *North Carolina Law Review*, *Georgetown Law Review*, the *Family Law Quarterly*, and elsewhere. She stresses that it can be difficult to pinpoint the impact of scholarship. However, she has gratifyingly observed many subsequent positive changes in that area of the law.

As part of her scholarship, Kessler conducted a pilot study on family leave that she began as an informal inquiry in the context of her own family leave. "I wanted to know what other law schools were doing," she says, explaining that she presented her article at the recent AALS meeting, where it was well received. "It was a great conversation," she reflects. "A lot of people raised their hands and asked questions. My real hope is that it will convince either the American Bar Foundation or AALS or another institutional organization to fund a big study."

As coauthor of the casebook *Battered Women and the Law*, Schneider has had considerable impact on the problem of violence against women. Her advocacy and scholarly efforts to bring national and international attention to that issue have contributed to such positive law reforms as the 1994 Violence Against Women Act. "You can have a broader impact as a writer. You can reach more people as a scholar. You can do consulting work in terms of advocacy testifying in Congress and drafting legislation," Schneider explains. "All those things are much easier to do after you've established yourself as a legal academic." 

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