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SALT Study on the Hiring and Retention of Minority and Female Faculty

SALT Governor Richard Chused is updating SALT's previous statistical study of employment patterns of women and minorities in legal education. Following are excerpts of his summary of preliminary findings, which reveal that recent progress in hiring minority faculty is "abysmal" and which raise questions about the concentration of women in non-tenure-track positions. Professor Chused plans to publish his final report in a law journal sometime in 1988.

The Society of American Law Teachers is now updating the survey it previously made of law school faculty composition for the 1980-1981 academic year by adding data on the 1986-1987 school year. The study also includes a first look at departure rates of women and minority faculty members between 1981 and 1987. To date, filled in survey questionnaires have been received from 108 schools. Since a second mailing to non-responding schools just went out a week ago, we expect to increase the response rate to about 125 schools. If any readers have not yet returned the questionnaires sent to them, please return them as soon as possible to Richard Chused at Georgetown University Law Center.

Given the in-process state of the survey, only tentative computer runs of the data have been made. But the size of the sample data available now is large enough to make some general observations that will almost surely hold up on later review. One preliminary table of data is provided on this page along with the following observations:

TABLE 1 -- HIRING TRENDS FOR BLACK FACULTY

Faculty Status	1980-1981 Academic Yr.	1986-1987 Academic Yr.
Tenured Classroom Faculty	1.7% (36/2072)	2.5% (62/2459)
Tenure Track Classroom Fac.	5.5% (40/728)	7.5% (46/611)
Tenured Clinical Faculty	None (0/37)	3.1% (2/64)
Tenure Track Clinical Faculty	11.1% (4/36)	12.7% (8/63)
Contract Status Clinical Faculty	3.6% (4/110)	3.7% (6/162)
Contract Status Legal Writing Fac.	1.5% (1/66)	3.2% (5/157)
Other Categories	2.7% (6/219)	3.4% (9/263)
Totals	2.8% (91/3268)	3.7% (136/3779)

Tenure and Tenure Track Position Hiring Patterns: The proportion of Hispanic tenure faculty members has stayed constant at less than 1% between 1981 and 1987. In the same time period the proportion of Black tenured or tenure track faculty members increased slightly, from 3% of faculty members to just over 3.5%. These figures are hardly much to cheer about.

The growth of women from over 10% of tenured or tenure track faculty to over 16% is more significant. The proportion of women in tenure track positions awaiting tenure decisions (about one-third) is approaching the proportion of women students in law schools across the country. Though this certainly represents a generally improving trend for women, some caution is clearly necessary. Tenure track positions on law school faculties are

more heavily occupied by tenured teachers now than in 1981 (about 80% rather than 75%). The number of newly available teaching positions is almost surely declining and will continue to do so for the foreseeable future.

Departure Patterns: The study investigates the hypothesis that Black, Hispanic, and women faculty members are denied tenure more often than majority male faculty members. So far, that has turned out not to be a general pattern. On the assumption that actual

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tenure decisions do not reflect the real, "effective" tenure denial rate, the study also explores the possibility that untenured minority and women faculty depart their institutions more frequently prior to tenure decisions. That has turned out to be true for Black and Hispanic untenured faculty, but not for women. The difference may arise because "tokenism" is alive and well in minority hiring, but has largely disappeared for women.

Almost two-thirds of the surveyed schools, excluding traditionally minority operated institutions, still have zero or only one Black faculty member. Sixty percent have zero or only one Black or Hispanic faculty member. No schools have fewer than two women, and more than half have more than five. To the extent that being a token creates pressures forcing people to seek new working environments, the growth in hiring of women in most law schools has alleviated tensions felt by the female pioneers in our ranks.

Legal Writing Teachers: Women comprise an especially large proportion of legal writing teachers on a contract rather than tenure track status. This group is almost 70% female. Contract status teachers leave their institutions at vastly higher rates than tenure track faculty. The notion that these positions create a track into "regular" teaching slots appears generally not to be so. A very small number of contract status teachers who leave their institutions catch on elsewhere or get promoted to tenure track status.

Issues: The study raises a number of important questions. The SALT Board of Governors will review the data at its upcoming meetings and issue policy statements on the hiring and retention of minority and female faculty. Though many issues are raised by this study, two especially important problems are quite apparent. First, progress in hiring minority faculty during the last six years has been abysmal. The fact that significantly more than half of American law schools continue to have only token or no minority representation on their faculties is simply unacceptable. There are also some important questions to be asked about the enormous proportion of women in legal

writing positions. Are they being "pushed" there by institutional undervaluation of the abilities of women, personal choices about the need for short-term employment, or some combination of factors? The number of legal writing teachers has grown in the last six years. The generally low pay scale and status of these positions suggests that an historically typical "women's job" pattern may be emerging.

The SALT Board of Governors very much wishes to hear from the membership about their views on issues that might be probed in this new study and on steps that could be taken to remedy problems in faculty hiring and retention policies. The data is flexible enough that it may be possible to probe for trends in areas of concern to you. Please feel free to send your comments, questions, and views on these matters to the study coordinator:

Professor Richard Chused
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Thank you for your help.

Affirmative Action in Faculty Hiring

Salt Governor Richard Chused's statistical survey of women and minorities in legal education updates a 1981-82 survey conducted by Chused and SALT past president David Chambers. In a published report, SALT Governor Charles Lawrence commented on the 1981-82 statistics on the hiring of minorities:

The results of the SALT survey confirmed the worst fears of those of us who are committed to the desegregation of the law teaching profession. The most glaring fact presented by the data was that virtually none of the schools surveyed had made significant progress in the integration of its law faculty.

Lawrence, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F.L. Rev. 429 (1986). In his report, Lawrence stated SALT's position on affirmative action:

The most efficacious institutional

policy for achieving faculty desegregation entails giving highest priority to filling a substantial number of positions with minority appointments and holding these positions open until vigorous recruitment, combined with an equally rigorous selection process, results in a minority appointment. Only by making an institutional choice to designate existing slots for minority candidates will faculties free themselves from the constraints of institutionalized practices and internalized preconceptions that perpetuate discrimination without advancing the quality of our law schools.

Id. at 438.

In light of the disappointing progress in affirmative action during the 1980's, as revealed by Chused's preliminary finding, SALT expects to issue another statement on affirmative action this academic year. This statement will address affirmative action for women, as well as for racial minorities.

Correction

As a result of last-minute typesetting changes, a paragraph on the front page of the October 1987 edition of the Equalizer was nearly unintelligible. The second-to-last paragraph of the story entitled "Harvard Feminist Denied Tenure" should have read:

Harvard President Derek Bok has announced that he will review the law school's denial of Dalton's tenure application. As an initial step he will ask Dalton's outside reviewers, most of whom highly praised Dalton's work, to comment on the criticisms voiced by Dalton's detractors at the law school.

SALT A.A.L.S. Schedule

SALT will sponsor the following activities at the A.A.L.S. Conference in Miami:

Friday, January 8: SALT Board Meeting (8:00 - 10:30 a.m.); Robert Cover Memorial Seminar (1:30 - 3:15 p.m.).

Saturday, January 9: SALT Awards Reception (6:00 - 8:00 p.m.); Awards Dinner (8:00 - 10:00 p.m.)

PRESIDENT'S MESSAGE

What Do Law Professors Do?

I have come to the end of my term with a sense of satisfaction derived from the organizational achievements of the last two years. I end my term, as I began, with a sense that I have truly been privileged to have the opportunity to work with the most energetic and cooperative group of law professors I have ever encountered. I am confident that Chuck Lawrence, as President, and Howard Glickstein, as President-elect, will bring the kind of imaginative leadership to SALT we have all come to expect from them in other roles.

The recent confirmation hearings of Judge Bork called to mind many different images of law professors and our role in society. The hearings were a rich and stimulating constitutional debate. There was, however, a subtext, a secondary dialogue about the role of law professors in society. It is this secondary text that stimulated the thoughts that follow.

Robert Bork was a law professor for most of his adult life. The intense debates surrounding his confirmation hearings have propelled the law teaching profession into national focus as have few other events. The recent nomination of Douglas Ginsburg raises new and important questions about that nominee's experience and qualifications. During the intersession before the debate about Judge Ginsburg, we have an opportunity to reflect upon some of the disputes about the nature of the law teacher's role in society. Four themes have emerged. **First**, "law professors are paid to be provocative." Judge Bork's defenders sought to separate him from his indisputably inflammatory written record by arguing that he could not be held accountable for hyperbole deployed in the service of a higher goal: open and robust intellectual exchange. His articles, they claimed, should be treated as something in the nature of "A Dinner with Andre" with footnotes - harmless speculations on the cosmos. **Second**, law professors achieve stardom and dominate our chosen fields by staking out extreme positions. George Priest, of Yale, in support of the nomination argued that extreme and immoderate arguments should be discounted and forgiven, because that is how one achieves intellectual domination of the terms of the debate. **Third**, in the courtroom "real people get hurt; in the classroom no one gets hurt." Judge Bork himself sought to shift the focus away from his scholarly work to his performance as a judge. He noted that he should be judged by his performance in positions of "real responsibility." Of course, the unstated premise of this argument is that what law professors do is of no special concern, because the world of ideas that we inhabit bears no relationship to the work of judges and lawyers serving clients. **Fourth**, the scorching scrutiny to which Judge Bork was subjected will have a "chilling effect" upon the intellectual honesty and creativity of law professors who aspire to this high office in the future.

Each of these arguments advances a view of the law teaching profession that suggests irresponsibility. The continued attractiveness of law teaching has been that we have the opportunity to think our own thoughts and get paid for doing so. We have the luxury of undertaking scholarship that reflects our own, sincerely held, views. We have the privilege of speaking as lawyers, without the obligation to protect a client's interest. Therefore, our real responsibility is to the society as a whole. When our scholarship is directed to the development of doctrine, we join a tradition of legal scholars who stand shoulder to shoulder with practitioners and judges who have accepted the responsibility and commitment to the rule of law. There is an unfortunate element of truth in the Priest observation that one way to achieve fame is to stake out and defend an extreme position. One only hopes that even the most ambitious among us will pause, from time to time, to consider the implications of our scholarship for citizens whose lives will be affected by judges acting under the influence of our theories. A final point goes to the heart of SALT's mission: the classroom, no less than the courtroom, is a place where real people get hurt. In the past two years we have heard from minority, women, and gay students who have shared with us the pain caused by classroom discussion that fails to acknowledge their human dignity. Moreover, we all know that the distance between theory and practice can be narrowed in an instant. Today's hypothetical, may indeed, become tomorrow's lawsuit.

There are many challenges ahead for SALT. We have the opportunity, indeed the obligation, to continue our efforts to broaden the vision of the role of law professors in this society.

Emma Coleman Jordan

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