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From Whence We Came and Where We Might Go

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FROM WHENCE WE CAME
AND WHERE WE MIGHT GO

Judith L. Maute*

WLE Chair—1997

Scientists today posit that our ability to remember information is weakened because of our reliance on electronic sources for quick retrieval. Increasingly I find myself saying, “If it’s not in writing, it didn’t happen”—relying on post-its and e-mail archives to prompt both short and long term memory. Alas, several office moves and changes in e-mail technology have purged or buried much evidence of that era. Laura Rothstein, ever organized and diligent, has retained voluminous files documenting the section’s activities through the years. She reminded me that much of our work in the 80s and 90s was done via snail mail, faxes and phone—how quaint! With her help and incomplete AALS section archives housed at the University of Illinois, research for this project helped reconstruct key events before and during my years in section leadership. Because such archeological digging is time consuming, I suggest we revive the position of “Historian” or “Archivist” who can gather materials lovingly maintained by prior section chairs, including Laura and Myrna Raeder.

This symposium issue of collected reflections serves both as important history (or herstory) and may stimulate thinking about future directions of the Section on Women in Legal Education (“WLE”). At various times when the number of women law students, lawyers or professors reached a critical mass, someone would wonder aloud about whether there was continued utility for a women’s section, and if so, what principles might guide it in the future. We have made great strides over the last forty years, and yet in reading the current news and advance sheets, I am struck with how much more is yet to be done—within the academy, the United States and the world. While the issues are far too broad for the section to embrace, it may serve as a source of support and inspiration for individual members to follow their passion in pursuit of gender justice in their teaching, scholarship and professional service activities. While many of the blatant inequities inside the legal academy have diminished over time, our own houses remain untidy in various respects, with significant differences in tolerance for internal strife or inequality. As highly educated women working in the legal academy, we have many privileges and powers that others do not. In our

* William J. Alley Professor of Law, President’s Associates Presidential Professor, University of Oklahoma College of Law. Thanks to Linda Jellum and Nancy Levit for initiating this archival project, and to the University of Missouri—Kansas City Law Review for collecting stories from those who previously chaired the Section on Women in Legal Education (WLE). Special thanks go to Laura Rothstein, who retained and reviewed voluminous section files in preparation of her submission and in support of mine.

respective fields of legal expertise, we should use our talents and resources to improve the lives of those less fortunate.

Discussion of one's term as Section Chair cannot be limited to the official calendar year. Prior involvement with section activities evolves into leadership roles on discrete projects, which may progress to serving on the Executive Committee and possibly into the leadership rotation. Many section members labored for years on various tasks central to our mission. For years Margaret Howard and Bari Burke served as co-editors of our outstanding newsletter. Section breakfasts at the annual meeting fostered creation of various working committees and subcommittees. Before my term as Chair in 1997, I worked on those dealing with Sexism in the Institution, Professional Barriers for Women, Sexual Harassment, and Child Care for AALS events.

In 1988 the ABA Commission on Women in the Profession, chaired by Hillary Rodham Clinton, held hearings around the country. Betsy Levin testified in her capacity as Executive Director of the AALS; Emma Coleman Jordan testified on behalf of the Society of American Law Teachers (“SALT”); and Teree Foster and I submitted written testimony relating concerns raised at an ad hoc meeting of section members, including remarkably overt gender hostility and chilly climate in the classroom, and how some schools blithely devalued women's contributions. Marina Angel's testimony became an article in Temple Law Review. As an outgrowth of this work, starting in 1988 Laura Rothstein and I co-chaired what became known as the "Chilly Climate Committee." Laura's reflections contained in this issue more fully develop our work in this regard. By 1989 these efforts produced a "Statement of Good Practices" on hiring, promotion, tenure, annual performance evaluations, teaching loads, service responsibilities, research support and respect for non-traditional and gender-related scholarship, maternity leaves and sexual harassment. At various times between 1989 and 1994 they were submitted to the AALS Executive Committee for adoption as official AALS statements. Ultimately AALS took no formal action, but permitted the section to send current deans a document renamed "Recommended Policies and Practices for Women in Legal Education." Although efforts to bring about change through the AALS structure were frustrating, in retrospect it is gratifying to see that some of those recommended policies and practices are now reflected in AALS membership

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2 AALS SECTION ON WOMEN IN LEGAL EDUCATION NEWSLETTER (Summer 1988) [hereinafter WLE NEWSLETTER] (reprinting testimony). The phrase "chilly climate" derived from a pathbreaking report, which one of the co-authors, Bernice (affectionately known as "Bunny") Sandler presented at a section program. See ROBERTA M. HALL & BERNICE R. SANDLER, OUT OF THE CLASSROOM: A CHILLY CAMPUS CLIMATE FOR WOMEN? (1984).
3 Marina Angel, Women In Legal Education: What It's Like To Be Part of a Perpetual First Wave or the Case of the Disappearing Women, 61 TEMP. L. REV. 799 (1988).
4 Letter from Laura Rothstein, Section Chair, to all AALS Member Deans (July 15, 1994) (on file with author). The Statement of Good Practices was referenced in WLE NEWSLETTER 6-7 (Summer 1989), WLE NEWSLETTER 6 (Mar. 1991), and WLE NEWSLETTER 8 (Apr. 1994).
standards and Statements of Good Practices, and widely accepted principles of sound personnel management. Having since served as AALS Summariand for some sabbatical site inspections, I expect that site teams listen carefully to serious concerns relating to gender and other discrimination issues.

Troubling word of sexual harassment of law students, faculty and staff members by faculty and administrators began surfacing while an ad hoc group gathered information and prepared the testimony before the ABA Commission on Women in the Profession. Some incidents involved senior faculty seeking favors from junior, untenured women, with implied threat of adverse employment or academic consequences. Others involved faculty or administrators and students, in which current course enrollment or employment as research assistants created significant power disparities. The law of sexual harassment was in its early formative stages, with the Supreme Court first recognizing harassment as actionable employment discrimination under Title VII in Meritor Savings Bank, FSB v. Vinson, decided in 1986. Within university communities, especially on the graduate level where students were closer in age to some of the professors, there was ongoing uncertainty about the extent of appropriate regulation of consensual relationships.

5 See, e.g., AALS Handbook and Bylaws (as amended through Jan. 2008), available at http://www.aals.org/about_handbook_bylaws.php (last accessed Sept. 8, 2011), Section 6-1 Core Values (b)(ii) (diversity of viewpoints), (iv) ("diverse faculty and staff hired, promoted, and retained . . . in accordance with principles of non-discrimination"); Section 6-5 Law School Governance (c) (faculty decisions on hiring, promotion, tenure and term appointments should use appropriate procedures, notice and reasonable criteria); Section 6-6 Faculty Development (requiring "conditions conducive to the faculty's effective discharge of its teaching and scholarly responsibilities," and appropriate policies and practices to permit creative faculty scholarship, financial, clerical, library and technical support, and academic freedom). See also AALS Statement of Good Practices by Law Professors in the Discharge of their Ethical and Professional Responsibilities, available at http://www.aals.org/about_handbook_sgp_eth.php (last accessed Sept. 8, 2011) (identifying types of discriminatory conduct "unacceptable in the law school community" and stating that "[l]aw professors should not sexually harass students and should not use their role or position to induce a student to enter into a sexual relationship, or to subject a student to a hostile academic environment based on any form of sexual harassment").

6 A newsletter identified members of the Sexism in the Institution Committee, including Laura Rothstein (Chair), Taunya Banks, Bari Burke, Natalie Loder Clark, Karen Czapanskiy, Teree Foster, Lisa Lerman, Judith Maute, Tony Robinson, and Kathy Schwab. WLE NEWSLETTER 4 (Summer 1988). Neither Laura nor I can recall precisely what that committee did, as opposed to the unnamed participants of the ad hoc group that gathered information and presented written testimony.

7 See, e.g., In re Peters, 428 N.W.2d 375 (Minn. 1988) (public reprimand of former William Mitchell Dean Geoffrey Peters for harassment of students and some staff members, including the acting library director, for conduct that occurred in 1982-83).


9 See HERMA HILL KAY & MARTHA S. WEST, SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS 995-96 (6th ed. 2006), citing Ronna Greff Schneider, Sexual Harassment and Higher Education, 65 TEX. L. REV. 525 (1987) (arguing that faculty should be held to a fiduciary standard requiring "scrupulous good faith" toward students and noting simmering debate within higher
In that context, in 1989 a WLE subcommittee on Sexual Harassment formed and worked over two years drafting an empirically sound questionnaire to be sent to all law schools, seeking to obtain reliable data about existing policies, the number of complaints and dispositions under the policies, and problems in implementation.\textsuperscript{10} Mary Becker of Chicago and I co-chaired that subcommittee, which included June Weisberger of Wisconsin, Ronna Greff Schneider of Cincinnati, Camille Hébert of Ohio State, and worked with Betsy Levin, then AALS Executive Director, and Rick White, a social scientist on staff. The aim was to gather “enough data on what works and what doesn’t in order to then begin drafting a proposed model policy.”\textsuperscript{11} The questionnaire was almost ready for launch, when Anita Hill’s ground-breaking allegations about Supreme Court nominee Clarence Thomas became public on October 2, 1991. Anita was a respected and trusted colleague at the University of Oklahoma, where many of our faculty rallied to her support. Within hours, section leaders and general membership sprang into action with faxes and phone calls, collecting 130 signatories to an October 7 letter to the Senate urging a delay in the confirmation vote until those charges were fully investigated.\textsuperscript{12} She testified October 11. An October 31 memo from Katherine Bartlett, Mari Matsuda, and Judith Resnik spearheaded further action. Taking advantage of the awakened public interest, the memo urged members to speak with the media and others, to dispel myths about harassment and to seek other ways to speak out against racism and sexual harassment.\textsuperscript{13} The rest is history, which is viewed differently, depending on one’s perspective. Without doubt, the nation’s views about sexual harassment dramatically changed. As a result, the new section leadership, led by then-Chair Karen Czopanskiy, decided to skip the data collection strategy as a prelude to policy drafting. Instead, the goal became to develop a model policy, “a fairly comprehensive set of principles for combating harassment in law schools.”\textsuperscript{14} After numerous phone conferences and a marathon meeting at the January 2003 annual AALS conference, this reconstituted group concluded that the goal was impossible and instead issued an interim report.\textsuperscript{15} In writing this essay, I have not seen evidence of such a model policy for law schools.\textsuperscript{16}

\textsuperscript{10} WLE Newsletter 4 (Mar. 1991).
\textsuperscript{11} Id.
\textsuperscript{12} WLE Newsletter 8 (Dec. 1991).
\textsuperscript{13} Id. at 8-9.
\textsuperscript{15} See WLE Newsletter 9 (Mar. 1992) (announcing project to develop model anti-harassment policies); Czopanskiy, supra note 14.
A notable long-term section strategy was to co-sponsor programs at the annual meeting, along with one or more substantive or affiliation group sections. This visible linkage between gender, race, sexual orientation and the substantive issues of contracts, property, torts, evidence, procedure, constitutional, employment and family law helped to develop the growing body of feminist jurisprudence and cast doubt on legal positivism, which claimed the existence of a unitary, neutral legal system in which all people were treated equally without regard to particular attributes, social or economic standing.

My "Chair's message" in the April 1997 newsletter summarized key events at the Annual Meeting. The luncheon speaker, Supreme Court Justice Ruth Bader Ginsburg, spoke poignantly about her early involvement with the Section on Women in Legal Education, when the nation's women law faculty could be seated at one table. A visual image I cherish is seeing Justice Ginsburg seated at lunch next to another founding member, Dean Herma Hill Kay. The power of this community has nurtured and enabled many women professors to do great things with their lives... [her] talk reflected on the women who have clerked for Supreme Court Justices, and some of the unique challenges they encountered.  

This remains a cherished memory, sitting with two foremothers of American feminist jurisprudence, and hearing them discuss their role in the academy and pursuit of gender justice. After four years on the Court, Justice Ginsburg wrote the majority opinion in United States v. Virginia, holding that Virginia Military Institute failed to meet the heightened burden to justify exclusion of women from the prestigious military academy.

In 1997 WLE was among the largest AALS sections, with nearly 1200 members. Antigone, the section listserv, had few subscribers and little activity. Other feminist listservs had been invaded by some who dominated conversation, or whose posts were inflammatory. I proposed that we establish standards for it to be a "Room of Our Own" open only to section members and that we have a gatekeeper to screen non-faculty requests for access. A committee drafted standards which were approved at the 1998 meeting. In short time, the AALS created its system of members-only listservs, making unnecessary the implementation of our standards. WLE and the Section on Minorities co-sponsored and began the Harriet Tubman Project, to provide "wise woman" assistance to faculty under consideration for promotion or tenure who needed an external supportive network or substantive mentor, and if needed, to help with escape. The brainchild of Joan Tarpley, this may be another activity worth reviving. A maternity leave project began to collect and evaluate schools'..

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17 WLE NEWSLETTER (Apr. 1997).
policies, building on Richard Chused’s germinal work on behalf of SALT. They included a section entitled “Honoring Those Who Have Gone Before Us,” with short retirement tributes and memorial statements about some who had died; in spring 1997, most notably Trina Grillo and Ellen Jordan. It is likely that this column ceased because the time and space commitment increased dramatically, along with our growing ranks, and because of an unwillingness to make untenable decisions on who should or should not be included. The breakfast meeting honored those who provided “valiant section service.”

Diversity issues were at the forefront of the 1998 Annual Meeting in San Francisco. SALT organized a march with about a thousand faculty in academic regalia demonstrating commitment to diversity in legal education. The luncheon and main section program focused on “The Lives of Women Lawyers” and considered empirical data, institutional policies and coping mechanisms to help our students develop satisfying careers while seeking appropriate work/life balance. Dean Barbara Aldave spoke at the luncheon; Deborah Rhode, Phoebe Haddon, Nancy Dowd, Cynthia Fuchs Epstein and Diane Yu served as panelists, moderated by Leslie Espinoza. A program on “Marriage as a Tripartite Institution” was jointly sponsored by the Sections on Family and Juvenile Law, Gay & Lesbian Issues, Minority Groups and WLE. Judith Wegner and Marilyn Yarbrough organized an off-site program for women considering a deanship and Georgetown Dean Judith Areen developed the Women Deans’ Databank. These efforts bore immediate results, with five new women deans appointed during the 1998-1999 academic year. Now the AALS maintains Women and Minority Deans’ Databanks. Continuing our tradition of co-sponsoring substantive sessions, Myrna Raeder organized a program with the Evidence Section exploring the relationship of gender and race in evidentiary rules and policies, and its impact in litigation.

19 Richard H. Chused, Faculty Parenthood: Law School Treatment of Pregnancy and Child Care, 35 J. LEGAL EDUC. 568 (1985) (showing lack of established institutional policy relegate much to decanal discretion based on the perceived value of the individual pregnant faculty member. Truly, a vivid instance of “the personal is political.”).


For nearly forty years, WLE has provided safe haven and crucial support for generations of women faculty, resulting in collective empowerment to bring about institutional change in law schools and advancements on gender-related legal issues. Reflecting now on some public and private discussions from the excellent AALS “Workshop on Women Rethinking Equality” (Washington, D.C., June 21-23, 2011), it is obvious that gender hostility and chilly climates still exist, though veiled and less overt at most schools. We must support our sisters-and-brothers-in-law who find themselves in such difficult situations in seeking a more tolerant and respectful work and academic environment. The day after the workshop ended, I heard the Supreme Court deliver late-term opinions, with Justice Ginsburg now joined by Justices Kagan and Sotomayor. That new image spawned ideas for future section leaders to resume the luncheon tradition, and when meeting in Washington, to seek opportunities to visit with one or more of those three wise women, and perhaps join together for our group admission to practice before the Supreme Court of the United States.

Historical events being depicted while polishing this essay are poignant reminders of individual voices that have made enormous differences in the quality of life and of justice in this country. In popular culture, the book and now blockbuster movie The Help\textsuperscript{22} frankly recounts experiences of black women maids and nannies in Jackson, Mississippi, set early in the 1960s civil rights movement shortly before Medgar Evers was brutally slain. Dedication of the Martin Luther King, Jr. Memorial in Washington, D.C., had to be postponed because of Hurricane Irene. Commemoration of the 150th anniversary of the U.S. Civil War revives national interest in the underlying moral imperatives. Coincidentally, the same day I saw The Help, Steven Spielberg’s Academy Award-nominated Amistad was shown on television. Both The Help and Amistad are powerful statements about the responsibility borne by those who represent (read as re-present) the painful stories of others: to be true, respectful and accountable for one’s own actions taken on behalf of others. The personal is political, which gains force with responsible collective action. Most current women law professors enjoy substantially greater workplace equality than their predecessors. We must not, however, ignore the plight of those less fortunate, including our sisters-and-brothers-in-law and people outside the law. As those with relative power in America and worldwide, we must continue to study and speak for those who are disadvantaged because of gender, race, class and poverty—standing alone or inter-connected.

I close as I began, with thanks for organizing this retrospective. As a section, we really have come a long way since the section began in 1970. Chronicling our collective past helps to appreciate the long-term changes we helped facilitate and to remember that some problems don’t go away but repeat themselves or resurface in different ways. I know that many of our sisters-in-law gravitated to the section as a source of support, including those who have served

\textsuperscript{22} Kathryn Stockett, The Help (2009); The Help (Dreamworks 2011).
in leadership capacities. All of us stand on the shoulders of those who went before us. As we go forward in time, we must not forget from whence we came and be guided by courage and wisdom in our actions.