



**BRIGITTE M. BODENHEIMER
MEMORIAL LECTURE ON THE
FAMILY**

UC's Women Law Faculty

*Herma Hill Kay**

I am delighted and honored to deliver the annual Brigitte M. Bodenheimer Lecture, both because I knew and admired Brigitte and because I delivered a lecture here in the spring of 1979 on the occasion of her retirement. It means a great deal to be invited back to be part of the Lecture Series established in her

* Barbara Nachtrieb Armstrong Professor of Law, School of Law, University of California, Berkeley (Boalt Hall); J.D., University of Chicago, 1959; B.A., Southern Methodist University, 1956. An earlier version of this paper was delivered as the Brigitte M. Bodenheimer Memorial Lecture at the University of California, Davis, School of Law on February 21, 2002. I am grateful to the following friends and colleagues who helped me by providing source material and/or reading the manuscript and making suggestions: Deans Susan Westerburg Prager, Mary Kay Kane, Rex Perschbacher, and Jonathan Varat; and to Catherine T. Albiston, Alison Grey Anderson, Babette Barton, Grace Ganz Blumberg, Carol Bruch, Patricia Cain, James Crawford, Alice Daniel, Erik Jayme, Gyogny Laky, Jean Love, Carrie Menkel-Meadow, Elizabeth Mertz, Arno Penzias, Carol Rose, Eugene Scoles, Eleanor Swift, Sandra Terzian, Associate Dean John C. Tomlinson, Martha S. West, and Franklin Zimring, as well as to research librarians Debby Kearney at Boalt Hall, Lee Ryan at USF, and Paul Lomio at Stanford. My Boalt Hall research assistants have been invaluable: my deepest thanks to Catherine T. Albiston, Kate Barry, and Carrie Williamson.

memory. On that earlier occasion, I took as my inspiration Brigitte's experience of combining a family and professional life to speak of dual career marriages.¹ Today, I will take my subject from another aspect of Brigitte's extraordinary career: her status as the first tenured woman law professor at the University of California, Davis.

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¹ See Herma Hill Kay, *Legal and Social Impediments to Dual Career Marriages*, 12 U.C. DAVIS L. REV. 207 (1979).

INTRODUCTION

This Lecture is drawn from my ongoing study of women who became law professors at U.S. law schools that were accredited by the American Bar Association (ABA) and members of the Association of American Law Schools (ABA/AALS schools) between 1900 and 2000.² In the context of that project, the University of California (UC),³ with its four law schools, provides an intriguing case study for several reasons:

1. UC has long been recognized as the most outstanding public research university in the country.⁴ Because its four law schools were founded between 1878 and 1965, its experience permits a historical examination of women's entry into legal education as students and faculty at a major public research university.⁵ I have divided the discussion into two time periods: 1900-1979, when the first women to enter law teaching began their careers; and 1980-2000, when many of the barriers that discouraged women had been removed or ameliorated, thus increasing the pool of potential women law faculty.

² See Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5 (1991) (describing the projected study). The scope and methodology of this study, as presently conceived, are described in the appendix.

³ The term "UC system" refers to the nine UC campuses that are governed by the UC Office of the President and the Board of Regents. It does not include Hastings College of the Law, which is an independent law school. Hastings, however, is affiliated with UC, but has its own Board of Directors. For purposes of this paper, there are only three law schools that are within the UC system: Berkeley, Davis, and UCLA. On the other hand, the term "UC" refers to all four law schools: Berkeley, Davis, Hastings, and UCLA.

⁴ Kay, *supra* note 2, at 111 (citing a 1935 survey that placed UC fourth nationally, after Harvard, Chicago, and Columbia, and first among public institutions). Recent appraisals agree. For example, in 1995, the National Research Council ranked 35 of Berkeley's 36 graduate programs among the top ten in their fields in terms of faculty competence and achievement. UC Berkeley web site, at <http://www.berkeley.edu/about/honors/grad/> (last visited July 10, 2002).

⁵ The dates used in this paper refer to the founding dates that appear in the University of California records. See *infra* notes 11-18 and accompanying text. All four UC law schools were accredited by the ABA and are members of the AALS, and thus satisfy the conditions for being included in my study, but their AALS membership dates are later than their founding dates. Thus, Hastings was a Charter member of the AALS in 1900, and remained a member school until 1916, when it lost its membership due to inadequacies in the law library until its reinstatement in 1920, only to be dropped again in 1927 until its final reinstatement in 1949. See *infra* notes 57-60 and accompanying text. Berkeley became an AALS member school in 1912; UCLA did so in 1952; and Davis in 1968.

2. All four schools have had women law faculty. The substance of this Lecture and of my larger project focuses on who these women are, how and why the first ones entered legal education, how they dealt with the male culture they encountered there, how they interacted with the women who came after them as faculty, and an account of their work as teachers and scholars.
3. With the exception of Hastings,⁶ none of the UC law schools had ever excluded women as students. I am interested in exploring the interaction between women law students and their women law professors, both in terms of role modeling and influencing women to enter into law teaching.
4. All four schools have had women Deans — a remarkable accomplishment in light of the fact that there were less than 50 women Deans at ABA/AALS law schools between 1900 and 2000.⁷
5. All four schools have had women of color⁸ on their faculties, another remarkable accomplishment when compared with other U.S. law schools.
6. All four law schools have had women faculty members who failed to achieve tenure. This fact does not set the UC schools apart from their sister institutions elsewhere, nor does it differentiate women faculty from their male colleagues. While some men also fail to achieve tenure, their national success

⁶ See Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman,"* 30 ARIZ. L. REV. 673, 700 n.143, 701, 705-15 (1988) (discussing the efforts of Clara Shortridge Foltz and Laura Gordon to gain admission to Hastings after Foltz had been rejected on January 10, 1879, by the Registrar who stated that the Directors had resolved "not to admit women to the Law School," including an account of the ensuing litigation). Mary McHenry, the first woman admitted to Hastings, graduated in 1882 and spoke at the school's graduation ceremonies. *Id.* at 715.

⁷ As of December 31, 2000, there were 183 ABA approved law schools of which 162 were also AALS member schools. See OFFICIAL A.B.A. GUIDE TO APPROVED LAW SCHOOLS 66 (2001); AALS DIRECTORY OF LAW TEACHERS (2001).

⁸ As used in this paper, "women of color" includes African-Americans, Asian-Americans, Latinas, and Native Americans, as well as South Asian-Americans who define themselves as women of color. Identifications are based on listings in the AALS Directory of Minority Law Teachers, personal knowledge, and questions to Deans of the four UC law schools.

rate is higher than that of women.⁹

I. UC'S EARLY WOMEN LAW FACULTY: 1900-1979

A. *The Founding of UC's Four Law Schools*

The University of California was created in 1868 by an Act of the Legislature, which authorized it to establish colleges of "medicine, law, and similar professional [schools]."¹⁰ Today, UC has four law schools. Three are campus-based and are part of the UC system-wide administration. The fourth school (affiliated with UC) is one of the eighteen ABA accredited independent law schools in the United States.¹¹ Hastings College of the Law was the first UC law school to be founded. Known as UC's "Department of Law," Hastings was established in 1878 by an Act of the Legislature and by a generous endowment from its founder, Chief Justice Serranus Clinton Hastings of the California Supreme Court.¹² Legal education at Berkeley began with the establishment of the Department of Jurisprudence in 1894¹³ and became the School of Jurisprudence in 1912.¹⁴ What was initially known as the "Southern Branch" of the University of California was established in Los Angeles in 1919.¹⁵ Pressure arose to open another law school there.¹⁶ Thirty years later, this dream was realized when the UCLA School of

⁹ See Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 336-37 (2000).

¹⁰ See THOMAS G. BARNES, *HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY* 70 (1978).

¹¹ *Committee Directory, Independent Law Schools*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR 18-19 (2001); E-mail from Barry A. Currier, Deputy Consultant, American Bar Association Section of Legal Education and Admissions to the Bar, to the author (Feb. 14, 2002, 01:52:00 PST) (on file with author).

¹² See BARNES, *supra* note 10, at 11-21 (donating \$100,000 in U.S. gold coin).

¹³ See SANDRA P. EPSTEIN, *LAW AT BERKELEY: THE HISTORY OF BOALT HALL* 31 (1997). On August 17, 1884, The Regents sent the following resolution to UC President Martin Kellogg: "[t]hat the branch of study now in charge of Professor [William Carey] Jones and constituting a part of the courses in the Department of History and Political Science, be separated from that department and formed into a new department embracing: (1) Constitutional Law of the United States, (2) International Law, (3) Roman Law, and (4) Jurisprudence." *Id.*

¹⁴ *Id.* at 62-67. The school's popular name, "Boalt Hall," is actually the name of its original 1911 building, named for John Henry Boalt and financed in large part by a gift from his widow, Elizabeth Josselyn Boalt. *Id.* at 56-62.

¹⁵ *Id.* at 198.

¹⁶ *Id.* at 198-99.

Law accepted its first entering class in 1949.¹⁷ Rising law school applications in the late 1950s prompted UC President Clark Kerr to appoint a university committee to study the feasibility of expanding legal education within the system. In 1960, the committee recommended the creation of additional UC law schools at three locations: Davis, San Diego, and Santa Barbara.¹⁸ The University chose Davis as its fourth location for a UC law school. Established in 1965, the Davis School of Law accepted its first entering class in 1966.¹⁹ I turn now to a discussion of the conditions under which women began teaching at UC law schools.

B. The Entry Of Women To UC's Law Faculty: 1900 -1979

Although UC admitted women students in 1870,²⁰ controversy surrounded the University's initial reluctance to hire women faculty. As early as September 1870, reports circulated to the State Teachers' Institute that the Board of Regents had adopted a rule "whereby ladies are excluded from becoming teachers in that institution."²¹ If such a rule existed, UC President Martin Kellogg recommended its reversal in 1889.²² In 1904, UC President Benjamin Ide Wheeler appointed Jessica Blanche Peixotto, the first woman to hold a full-time UC faculty appointment, as a Lecturer.²³ UC's first woman law professor, Barbara Nachtrieb Armstrong, studied under Professor Peixotto in the Department of Social Economics at Berkeley.²⁴

¹⁷ *Id.* at 201. The name of the new school created an opportunity for the Berkeley law faculty. *Id.* at 202. From time to time, beginning in 1929, the faculty had sought unsuccessfully to change its institutional name from "School of Jurisprudence" to "School of Law," but was met with the objection from the Berkeley campus administration that the 1878 Act creating Hastings had provided that Hastings "shall be the Law Department of the University." *Id.* This provision was understood to mean that only Hastings could bear the official title "School of Law." *Id.* When the UC Regents allowed UCLA's new school to call itself a School of Law, the basis for that understanding vanished, and the prompt request of Dean William Prosser to change the name was granted. *Id.*

¹⁸ *Id.* at 261. To date, only the law school at Davis has been established.

¹⁹ *Id.* Berkeley Professor Edward L. Barrett, Jr. was the School's Founding Dean.

²⁰ See LADIES BLUE AND GOLD, EDITORIAL BOARD PREFACE, 1 CHRONICLE OF THE UNIVERSITY OF CALIFORNIA ix (1998).

²¹ See GERALDINE JONCICH CLIFFORD, "EQUALLY IN VIEW": THE UNIVERSITY OF CALIFORNIA, ITS WOMEN, AND THE SCHOOLS 21 (Carroll Brentano & Sheldon Rothblatt eds.), CHAPTERS IN THE HISTORY OF THE UNIVERSITY OF CALIFORNIA, NO. 4 (Center for Studies in Higher Education and Institute of Governmental Studies, U.C. Berkeley, 1995).

²² *Id.*

²³ See Mary Ann Dzuback, PEIXOTTO, Jessica Blanche, in 17 AMERICAN NATIONAL BIOGRAPHY 258-60 (1999).

²⁴ *Id.*

Women law professors were a minuscule presence in legal education during the first half of the twentieth century. Donna Fossum, a research attorney at the American Bar Foundation, conducted a study on women law professors and found that only five such women were teaching in 1950.²⁵ For this study, I have identified fourteen women whose academic careers started between 1900 and 1959,²⁶ and whom I call "early women law professors."²⁷ The first of these fourteen women to become law

²⁵ See Donna Fossum, *Women Law Professors*, 1980 AM. B. FOUND. RES. J. 903, 905 (1980). Since Fossum does not list the names of these five women, it is unclear whether all of them are included in my list of fourteen early women law professors. See *infra* note 26.

²⁶ See Kay, *supra* note 2, at 8 (listing thirteen women). Since the time of that publication, I have identified another such woman, Professor Marygold Melli of Wisconsin, thus bringing the list to fourteen. As listed there in order of their professional appointments, the fourteen are: Barbara Nachtrieb Armstrong, University of California, Berkeley, 1919; Harriet Spiller Daggett, Louisiana State University, 1926; Margaret Harris Amsler, Baylor University, 1941; Soia Mentschikoff, Harvard University, 1947; Jeanette Ozanne Smith, University of Miami, 1949; Clemence Myers Smith, Loyola University of Los Angeles, 1952; Ellen Ash Peters, Yale University, 1956; Janet Mary Riley, Loyola University of New Orleans, 1956; Helen Elsie Steinbinder, Georgetown Law Center, 1956; Dorothy Wright Nelson, University of Southern California, 1957; Joan M. Krauskopf, Ohio State University, 1958; Maria Minnette Massey, University of Miami, 1958; Marygold Melli, University of Wisconsin, 1959; and Miriam Theresa Rooney, Seton Hall University, 1959. *Id.* Four of these women began their academic careers as law school librarians, three at the same school where they later moved to the regular faculty as full-time professors. *Id.* at 9. The dates of their faculty appointments in each case are later than the dates at which they began working at their schools as librarians. *Id.* Thus, Janet Riley began her appointment at Loyola, New Orleans, as a law librarian on December 16, 1945; Minnette Massey began as a law librarian at the University of Miami in 1951; and Helen Steinbinder became a law librarian at Georgetown Law Center in January, 1956. *Id.* Miriam Rooney was Associate Professor of Law and Law Librarian at The Catholic University of America from 1948-51, when she went to Seton Hall. *Id.* at 8. Seton Hall did not become a member of the AALS until 1959. See AALS DIRECTORY OF LAW TEACHERS 154 (2001).

²⁷ My definition of a "professor" includes only tenure or tenure-track assistant, associate, and full professors. It excludes librarians, clinicians, adjunct professors, and legal writing teachers, even though some of the women who were law librarians during this period held professorial appointments. See *infra* Appendix. Others have drawn similar distinctions. See 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, 803 (1988) (including "only those teachers with visibility and power within their school; namely, tenured or tenure-track regular assistant professors, associate professors, or professors"); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 206 (1997) [hereinafter Merritt & Reskin, *Sex, Race, and Credentials*] (stating that "[w]e chose tenure-track law professors as the subject of our study because those faculty members hold influential posts, shaping both the next generation of lawyers and the development of legal doctrine."); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, And What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 871-72 (1984) (counting only tenure-track faculty, defined as "professor, associate professor, or assistant professor, unmodified by any other term such as adjunct, clinical, visiting, or emeritus" and noting that "[l]ibrarians, although usually tenure-track, were excluded because they constitute a

professors was Barbara Nachtrieb Armstrong. In 1919, Armstrong began her academic career at Berkeley as a joint Lecturer in the Department of Social Economics and the School of Jurisprudence. In 1923, Armstrong became an Assistant Professor at both the Department of Social Economics and the School of Jurisprudence.²⁸ Because Professor Armstrong was the only woman appointed by a UC law school before 1960, I will treat the group of early UC women law professors as those whose academic careers began before 1980, rather than before 1960.²⁹ Listed in the order of their appointments, the first women law professors at each of the four UC law schools are: Barbara Armstrong at Berkeley, Barbara Brudno at UCLA, Brigitte Bodenheimer at Davis, and Alice Daniel at Hastings.³⁰

A natural question to ask is why did these early women decide to enter a male-dominated profession. Once they did, how did these women professors fare on the standard measures of academic success? I will examine four stages of these early women law professors's careers. First, I will look at hiring, as they encountered the academic marketplace. Second, I will look at performance, as they learned the skills of teaching and research. Third, I will look at retention, as they experienced the tenuring process. Lastly, I will look at flourishing, as they made their names as teachers and scholars. At each stage, I will discuss the structural obstacles that hindered, or in some cases, prevented their success.

distinct career line.”).

²⁸ AALS DIRECTORY OF LAW TEACHERS (1922-2001). Unless otherwise indicated, the AALS Directories are the source for the data presented in this paper concerning women law professors. The first AALS Directory was published in 1922 under the title “Directory of Teachers;” its contents were described as “An Alphabetical List of Teachers with Biographical Matter,” and it was compiled and edited by the AALS Committee on Recruiting the Teaching Branch of the Profession. The name was changed in 1941 to “Directory of Law Teachers.” The optional designation of teachers according to sex began with the 1986-87 Directory of Law Teachers.

²⁹ Many of the women who held tenure or tenure-track appointments at ABA/AALS law schools began their careers in non-tenure or non-tenure track positions. *See supra* note 28. In this study, I date their academic careers from the time of their first tenure or tenure-track appointment, as Assistant Professor, Associate Professor, or Professor. Within the UC system, the title “Acting Professor” is the entry-level title used in the law schools for tenure-track (“ladder rank”) faculty. *See* UNIVERSITY OF CALIFORNIA ACADEMIC PERSONNEL MANUAL, APM 235-4(d) (Office of the President, 2002), *available at* <http://www.ucop.edu/acadadv/acadpers/apm/welcome.html> (stating that “[a]n Acting Professor in a School of Law is governed by all academic personnel policies applicable to Assistant Professors.”).

³⁰ *See supra* note 28.

1. Hiring

First, we might ask how receptive each school was to the idea of adding women to its faculty. One indicator of receptivity is the length of time that elapsed between the school's founding and the date when its first woman joined the regular faculty. In this case, none of the four UC law schools had a woman on its founding faculty. Each school, therefore, had a time lag. For instance, Hastings, with the longest time lag, waited ninety-four years before appointing its first woman, Alice Daniel as an Associate Professor, to the regular faculty.³¹ Unfortunately, but not atypically, Professor Daniel remained at Hastings for only two years.³² Berkeley, however, shortened its time lag considerably and took only twenty-nine years after its founding in 1894 to appoint Barbara Armstrong in 1923.³³ UCLA cut Berkeley's time lag by ten years, appointing Barbara Brudno as an Assistant Professor in 1968, nineteen years after its founding in 1949.³⁴ Davis had the shortest time lag of the four schools; only seven years elapsed between its founding in 1965 and its appointment of Brigitte Bodenheimer as Professor of Law in 1972.³⁵ The number of regular faculty at each school when its first woman was appointed was thirty at Hastings, twelve at Berkeley, thirty-three at UCLA, and twenty-one at Davis.³⁶

By comparison, two of California's most prestigious private law schools had longer time gaps than any of the UC schools except Hastings. Stanford, founded in 1893,³⁷ appointed its first woman, Barbara Allen Babcock, seventy-nine years later, in 1972. The University

³¹ Elizabeth B. Richards is the other woman faculty member listed in the 1970 AALS Directory with the academic title of Associate Professor before Alice Daniel. Dean Mary Kay Kane informed me that Ms. Richards was an adjunct professor who did not hold a regular faculty position at Hastings. E-mail from Mary Kay Kane, Dean, Hastings College of the Law, to the author (Feb. 14, 2002, 14:14:46 PST) (on file with author).

³² See *supra* note 28.

³³ Professor Armstrong began her academic career in 1919 as a Lecturer in the Department of Social Economics and the School of Jurisprudence. See AALS DIRECTORY OF LAW TEACHERS 123 (1972). At that time, her name was Barbara Nachtrieb Grimes. See *id.* If Berkeley's founding were to be dated from the year it became the School of Jurisprudence, in 1912, its time lag would be reduced to eleven years.

³⁴ At the time of Professor Brudno's appointment, her name was Barbara Brudno Rintala. See *id.*

³⁵ Professor Bodenheimer began her academic career at Davis in 1971 as a Lecturer. See *id.* If Davis's founding were to be dated from the year it admitted its first class, in 1966, its time lag would be reduced to six years.

³⁶ See *id.*

³⁷ See SANDRA P. EPSTEIN, *supra* note 13, at 71.

of Southern California, founded in 1904,³⁸ appointed its first woman, Dorothy Wright Nelson, fifty-five years later, in 1959.³⁹ The Law Schools at Hastings, Berkeley, Stanford, and USC were all founded within a twenty-six year period between 1878 and 1904, a time when few women obtained law degrees.⁴⁰ A time lag is therefore not surprising. Barbara Armstrong, the first woman ever appointed to the faculty of any ABA/AALS school, did not begin her career as a Lecturer at Berkeley until 1919, fifteen years after the last of these four schools was founded.⁴¹ Even before Professor Armstrong was appointed, a national survey that ranked law schools according to their number of women students showed an increase in the pool from which women faculty were recruited.⁴²

A second indicator of a law school's receptivity to women faculty is the time it took each school to hire a second woman faculty member. On this measure, the four UC schools are arrayed differently. Hastings hired its second woman, Vivian Deborah Wilson, one of its own graduates, to the regular faculty four years later in 1976.⁴³ By the time

³⁸ See *id.*

³⁹ Judge Nelson began her academic career at USC in 1957 as an Instructor and became an Assistant Professor in 1959. See *supra* note 28. She is among the group I call "early women law professors." See *supra* note 2.

⁴⁰ Mary McHenry was the first woman to graduate from Hastings in 1882. See BARNES, *supra* note 10, at 57-58. Berkeley's first woman graduate was Emmy Marcuse, who received her J.D. degree in 1906. See SANDRA P. EPSTEIN, *supra* note 13, at 306. Stanford's first woman to graduate was Altha Curry Perry, who received her J.D. in 1917. Fax from Paul Lomio, Librarian, Stanford Law Library, to the author (Apr. 2, 2002 13:35:00 PDT) (copy on file with author). USC's was Lotte Park, who received her LL.M. degree in 1904. E-mail from Dean John G. Tomlinson to the author (Apr. 15, 2002 15:31:34 PDT) (copy on file with author) (citing unpublished material from USC Law School). Ada Kepley, the first woman to graduate from a U.S. law school, did so in 1870 from Union College of Law in Illinois (now Northwestern). By 1900, the U.S. Census counted 1,010 women lawyers in the entire country. See ROBERT STEVENS, LAW SCHOOL LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 42, 82 (1983).

⁴¹ See *supra* note 28.

⁴² See SANDRA P. EPSTEIN, *supra* note 13, at 306 (citing Beatrice Doerschuk, *Women in Law*, Bull. No. 3 (New York: Bureau of Vocational Education, 1920)). The survey ranked the University of Chicago first with twelve women students, Berkeley and the University of Washington tied for second with six women students each, and four other schools, Cornell, Northwestern, the University of Pennsylvania, and Wisconsin tied for third place with four women students apiece. See also, Matta Winter, *Creating a Critical Mass: The Women Students*, 17 CORNELL L.F. 3, 3 (1991) (pointing out that Mary Kennedy Brown, who earned her LL.M. in 1893, was Cornell's first woman graduate, and that by 1991, 1,309 women had followed in her footsteps, constituting over 10 percent of the alumni).

⁴³ The AALS Directory lists two other women hired in 1976, the same year as Professor Wilson: Helen Wharton, a Berkeley graduate, and Althea Lee Jordan. See *supra* note 28. Dean Mary Kay Kane informed me that Lee Jordan was the Director of Legal Research, not

Wilson was appointed, Alice Daniel had resigned from Hastings to enter into private practice.⁴⁴ Like Hastings, UCLA took four years to add more women to its faculty. When UCLA did so in 1972, it hired three women trained in California as Acting Professors in the same year. They were Alison Grey Anderson, a Berkeley graduate, Carole E. Goldberg, a Stanford graduate, and Susan Westerborg Prager, a UCLA graduate who would become Dean ten years later.⁴⁵ Davis improved on this record by appointing Jean C. Love, a Wisconsin graduate, as an Acting Professor in 1972, one year after Brigitte Bodenheimer had begun lecturing at Davis.⁴⁶ The number of regular faculty at each of these three schools when it appointed its second woman was forty-one at Hastings, thirty-eight at UCLA, and twenty-two at Davis.⁴⁷

Berkeley is at the bottom of the list on this measure. It was not until after Barbara Armstrong had formally retired at the age of 67 in 1957 and was teaching as a Professor Emerita that the school appointed its second woman. Professor Richard W. Jennings, who chaired the Berkeley Faculty Appointments Committee at the time, said that while the committee "didn't have any agenda about women," he supposed that "there was an agenda so far as when Barbara retired."⁴⁸ In 1959, the Appointments Committee located me while clerking for their former colleague (and Barbara's close friend), Justice Roger J. Traynor of the California Supreme Court. Upon his recommendation, I was invited to interview for a teaching position. I joined the Berkeley faculty as an Acting Assistant Professor in 1960, exactly thirty-seven years after Barbara's appointment as an Assistant Professor in 1923.⁴⁹ At the time, Berkeley had a regular faculty of twenty men.⁵⁰

As Table 1 shows,⁵¹ the number of women hired by the four UC law schools as regular members of the faculty between 1900 and 1979 is

a regular member of the faculty. E-mail from Dean Kane, *supra* note 31. Professor James Crawford, then a faculty member at Hastings, has informed me that Helen Wharton was not a regular member of the faculty. E-mail from Professor James Crawford, Professor Emeritus, University of California, Berkeley, School of Law (Boalt Hall), to the author (Feb. 22, 2002, 09:54:34 EST) (on file with author).

⁴⁴ See *supra* note 28.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Interview with Richard W. Jennings, Professor of Law, University of California, Berkeley, School of Law, in Berkeley, Cal. (Nov. 8, 1990) (transcript of interview on file with the author).

⁴⁹ See *supra* note 29 (explaining the title prefix "Acting").

⁵⁰ See *supra* note 28.

⁵¹ See *infra* tbl. 1.

remarkably consistent: six each at Hastings, UCLA, and Davis, five at Berkeley. The time lag between the date of each school's founding, however, and its initial female hire is quite different. How can these differences of timing be explained? Hastings's situation is perhaps clearer than the other schools. Although Judge Hastings had hoped that the school would ultimately be located on the Berkeley campus,⁵² it opened its doors in San Francisco, and remains there to this day. John Norton Pomeroy and Charles William Slack, a team of academic leaders compared favorably to Harvard's Christopher Columbus Langdell and James Barr Ames, created Hastings's early program of instruction.⁵³ In the early 1900s, the faculty, largely chosen by Dean Edward Robeson Taylor, were all San Francisco practitioners who have been described as "good" but not "outstanding," and whose competence was exhibited in the classroom rather than in scholarship.⁵⁴ When Berkeley established the Department of Jurisprudence, it quickly chose a scholarly academic mission to distinguish itself from Hastings, which it viewed as a school staffed by part-time faculty that trained students to become practitioners.⁵⁵

The winds of reform that began to move through legal education in the 1920s ultimately blew more in the direction of the Berkeley model, rather than that of Hastings. The Berkeley model consisted of more stringent pre-law education requirements for student admission, a full-time faculty devoted to academic pursuits, and a library sufficient to support scholarly research.⁵⁶ Throughout its history, Hastings had lost its AALS membership twice: the first time in 1916, because its law library did not satisfy the AALS's standards, and the second time in 1927.⁵⁷ At the latter time, Hastings had three problems: (1) its failure to satisfy the educational standards for student admission; (2) its failure to have at least three full-time faculty members; and (3) its failure to maintain adequate student performance records.⁵⁸ By 1935, the Secretary of the ABA Section of Legal Education and Admissions to the Bar had informed UC President Robert Gordon Sproul of its concern that Hastings's continued failure to have three full-time faculty might

⁵² See BARNES, *supra* note 10, at 17.

⁵³ *Id.* at 88-89.

⁵⁴ *Id.* at 159-60.

⁵⁵ See SANDRA P. EPSTEIN, *supra* note 13, at 45-46.

⁵⁶ See STEVENS, *supra* note 40, at 112-30.

⁵⁷ See BARNES, *supra* note 10, at 150. Hastings was reinstated in 1920. *Id.*

⁵⁸ *Id.* at 224.

jeopardize the University's accreditation status.⁵⁹ The Hastings Board of Directors agreed to increase the number of full-timers, and the school was granted provisional ABA approval in August 1939.⁶⁰

The question remained: where was Hastings to recruit full-time faculty? Dean David E. Snodgrass provided the solution. Dean Snodgrass, whose administration began in 1940, created the novel idea of hiring retired distinguished faculty who still wanted to teach. At the time, Hastings had no pension plan and no mandatory retirement system.⁶¹ Those colleges and universities that did have retirement plans rarely included forfeiture or reduction of pension provisions for continuing employment.⁶² These two factors, in addition to Dean Snodgrass's preference for hiring full-time faculty and the sharply increased post-World War II law school enrollments, created the conditions that enabled the Hastings "65 Club" to flourish.⁶³ The first two "65ers" were hired in 1940,⁶⁴ and in the Club's heyday, around 1951 to 1973, the 65ers provided between 50 to 90 percent of the instruction at Hastings.⁶⁵ By 1978, Hastings had hired seventy-six members of the 65 Club,⁶⁶ many of whom had been former Deans, and most of whom were among the top scholars of their generation.⁶⁷

Given the demographics of legal education between 1940 and 1972, when the Hastings Board of Directors decided that seventy-eight would become the presumptive age of retirement,⁶⁸ every member of the 65 Club was a white man. Dean Snodgrass's standard response to applicants seeking teaching jobs at Hastings was that the school was hiring no full-time faculty under sixty-five.⁶⁹ This requirement no doubt had a direct negative impact on the hiring of women faculty at Hastings. Moreover, as the word spread about the success of the plan, other law

⁵⁹ *Id.* at 240-41.

⁶⁰ *Id.* at 242-43.

⁶¹ *Id.* at 245.

⁶² *Id.* at 340-41.

⁶³ *Id.* at 336-37.

⁶⁴ *Id.* at 244-45. Orrin Kip McMurray had retired from the Berkeley faculty. Arthur Martin Cathcart had retired from Stanford.

⁶⁵ *Id.* at 338.

⁶⁶ *Id.* at 344.

⁶⁷ *Id.* at 344-57 (listing most of the members of the 65 Club by name and describing their accomplishments).

⁶⁸ *Id.* at 357. "Presumptive" is the right word. Exceptional cases could be accommodated, not only at Hastings, but also at Berkeley. Thus, at the time of his death in 2000 at the age of 92, Professor Stefan A. Riesenfeld, who had become a 65er in 1974, was teaching at both Hastings and Berkeley as a Professor Emeritus. *Id.* at 347; *see supra* note 28.

⁶⁹ *Id.* at 337.

schools began to see emeritus faculty as an attractive pool for recruitment.⁷⁰ To their credit, the women law students at Hastings decided to take action to change the situation.⁷¹ In the spring of 1976, the Clara Foltz Society, as the Hastings Women Law Students Association is called, invited me to attend a tea they had sponsored for the faculty. They asked me to speak about the effect of the 65 Club on the appointment of women faculty. I dutifully accepted the invitation and called to the faculty's attention the obviously limited nature of the 65 Club hiring pool. At the time, only Barbara Armstrong, who had retired from Berkeley in 1957, would have been eligible for the 65 Club.⁷² Unfortunately, she had died in January 1976. I estimated that the next woman would not become eligible until my former Chicago Professor, Soia Mentschikoff, reached retirement age in 1980. Hastings Dean Marvin Anderson, who was present, did not bat an eye. He said that he and some of his faculty advisors had been following my progress at Boalt Hall, and if I continued to do well, they might be willing to consider me a bit early. Still, the point had been made. In 1976, Vivian Deborah Wilson, who had come to Hastings in 1974 as Assistant Dean for Student Affairs, was appointed an Assistant Professor, and, in 1977, Hastings hired two more women. One of these, Mary Kay Kane, is the school's current Dean, and the other, Trina Grillo, was the first woman of color appointed to the Hastings faculty. The following year, two other women faculty were added: Paula Downey, a Berkeley graduate, and Marsha Cohen, a Harvard graduate.

The 65 Club, of course, was notorious beyond legal education.⁷³ At some point it became a buyer's market for Hastings, as those who had moved West extolled its many attractions to their former colleagues back East. Berkeley's irrepressible Dean, William Prosser, wearing his hat as unofficial skit-writer for the Extravaganzas held at the AALS annual

⁷⁰ *Id.* at 343-44.

⁷¹ Their hopes were dashed when Berkeley Professor Adrian A. Kragen, who became a 65er in 1974, turned out to be a male rather than a female, as they had expected from his first name. E-mail from Professor James Crawford, Professor Emeritus, University of California, Berkeley, School of Law (Boalt Hall), to the author (Feb. 23, 2002, 10:02:44 EST) (on file with the author). They were not the only ones to make this mistake. Professor Kragen told me that when he was named Deputy Attorney General of California, he received a congratulatory call from *Who's Who*, wishing to include him in the next issue of *Who's Who Among American Women*. Interview with Adrian A. Kragen, Professor of Law, University of California, Berkeley, School of Law, in Berkeley, Cal. (Dec. 12, 1989) (transcript of interview on file with the author).

⁷² See *supra* note 28.

⁷³ See BARNES, *supra* note 10, at 342-43.

meetings, immortalized the practice in a song called "Over the Hill to Hastings," sung to the tune of "Over the Hill to the Poorhouse" at the 1957 Extravaganza.⁷⁴ Prosser's lyrics went as follows:

OVER THE HILL TO HASTINGS

I'm approaching the date of retirement,
Next year on July twenty-nine;
A statutory requirement,
For few die, and none will resign.
I'm tired, and weary of teaching,
Worn down by the ultimate straw;
I'm hopeful I soon will be reaching
The Hastings College of Law,

Where nobody reads any cases,
And nobody does any chore,
And life is all lovely and lazy,
And nobody works anymore.

There days go by without number
Like lilies afloat on a stream,
And no one's disturbing your slumber,
Or interrupting your dream.
No problems are ever suggested,
In quandaries no one is mired,
And quiet is requested
For those who have retired.

There nobody reads any cases,
And nobody does any chore,
It's over the hill to Hastings,
Where nobody works anymore.

The process of daily digestion
Goes on without any surcease,

⁷⁴ See AALS Law School Association Lyrics (on file with author); see also Proceedings of the 1957 Annual Meeting of the AALS, pt. 1, at 8 (Dec. 29, 1957) (describing the entertainment to be presented by Dean Prosser and the Bay Area law schools); see also BARNES, *supra* note 10, at 335-36 (reprinting the Hastings lyrics). The song was performed by Professor John W. Reed of Michigan Law School.

And no one proposes a question
Infringing that infinite peace.
In offices tasteful and cozy,
The faculty all take their rest;
And everything's golden and rosy
In that paradise out in the west.

Where nobody reads any cases,
And nobody does any chore;
It's over the hill to Hastings,
Where nobody works any more.

The Hastings 65 Club ended in 1993, when changes in the retirement laws made the practice less attractive.⁷⁵ Its remaining members chose to retain their designation as 65ers, but all subsequent appointees to these positions were given the title "Distinguished Professor."⁷⁶ Only after the 65 Club had formally come to an end did Hastings appoint a woman who would have met the 65 Club's requirements: Professor Virginia A. Leary, a well-known specialist in International and Comparative Law and Human Rights. Following her retirement from Buffalo, Leary was appointed in 1998 at the age of seventy-two to the Alfred and Hanna Fromm Chair and designated as a Distinguished Professor at Hastings.⁷⁷ The Hastings faculty conferred the title "Distinguished Professor" upon Dean Mary Kay Kane in 2000, well in advance of her sixty-fifth birthday, making her the second woman to hold this designation.⁷⁸

The three campus-based UC law schools lacked any structural constraint to the hiring of women faculty similar to those imposed by the dearth of women practitioners prior to 1940⁷⁹ and thereafter by the

⁷⁵ E-mail from Dean Kane, *supra*, note 31. The Age Discrimination in Employment Act, Pub. L. 90-202, 81 Stat. 602 (1967) (codified at 29 U.S.C. §§ 621-634 (1994)), originally prohibited discrimination against an individual based on age between 40 and 70. A 1986 amendment, which removed the upper limit of 70 years, was enacted subject to a temporary exception for tenured employees. See Pub. L. 99-592, §§ 6(a)-(b), adding subsection (d). Subsection (d) contained a sunset provision, whereby it would expire on December 31, 1993. As of January 1, 1994, no academic institution (including law schools) could impose mandatory retirement on tenured faculty at any age. Thus law faculty over the age of 70, and otherwise qualified, could continue to teach at their home institutions.

⁷⁶ E-mail from Dean Kane, *supra* note 31.

⁷⁷ See *supra* note 28.

⁷⁸ E-mail from Dean Kane, *supra* note 31.

⁷⁹ The entries for Hastings in the AALS Directories between 1922 and 1927 do not list the names of any women on the faculty. See *supra* note 28. Since Hastings was dropped from AALS membership in 1927 and not reinstated to provisional membership until 1939,

existence of the Hastings 65 Club. Indeed, some of them had propitious opportunities. Davis, the youngest of the four schools, was founded in 1965, the year when the number of women law students began its astronomical national climb. Within twenty years, the number of female J.D. law students rose from 4 to 40 percent.⁸⁰ In that same year, the number of women law professors in tenure or tenure-track positions at ABA/AALS schools reached a total of twenty.⁸¹ Davis took advantage of these emerging opportunities to add women to the faculty. In 1973, the school doubled the number of its women faculty from two to four with the appointments of two Berkeley graduates, Carol S. Bruch and Sandra Terzian, as Acting Professors.⁸² Two more women came aboard in 1975: Susan Fletcher French from the University of Washington and Emma Coleman Jordan, from Howard. Jordan was the first woman of color appointed to the UC law faculty, and also the first to be tenured.⁸³ Professor Love recalls that these six Davis women discovered that they made up the largest percentage of females on any law faculty in the country: six out of twenty-eight, or about 22 percent. They celebrated the school's and their accomplishment by giving a party at the AALS annual meeting held in Houston in 1976, and invited as their guests all women law professors. When news of the all-female party spread, it attracted the attention of several of the (all male) chairs of faculty appointments committees from other schools, who decided to crash the party and turn it into a recruiting event.⁸⁴ Professor Patricia Cain, then a member of the Texas law faculty, recalled how her meeting with Tom Heller, the Chair of the University of Wisconsin appointments committee, resulted in her visit to Wisconsin the following year.⁸⁵

In 1975, UCLA added a fifth woman, USC graduate Janet Wright as Acting Professor, to the four who had been appointed earlier.⁸⁶ The

there are no entries for the school during those years. *Id.* See *supra* notes 57-60 and accompanying text. The school is listed in the 1950-51 Directory, but its faculty contained no women at that time. See *supra* note 28.

⁸⁰ See A Review of Legal Education in the United States Fall 1986: Law Schools and Bar Admission Requirements, 1987 A.B.A. Secretary of Legal Education and Admissions to the Bar 66 (reporting that between 1965 and 1985 the proportion of women J.D. law students enrolled in ABA approved law schools rose from 4 percent to 40 percent).

⁸¹ See Kay, *supra* note 2, at 10 & nn.26-28.

⁸² See *supra* note 28.

⁸³ *Id.*

⁸⁴ E-mail from Jean Love, Professor of Law, University of Iowa Law School, to the author (Feb. 20, 2002, 11:04:48 CST) (on file with author).

⁸⁵ E-mail from Patricia Cain, Professor of Law, University of Iowa Law School, to the author (Feb. 20, 2002, 10:07:59 CST) (on file with author).

⁸⁶ See *supra* note 28.

sixth, and final, woman appointed to the UCLA faculty before 1980 was Carrie Menkel-Meadow, who joined the clinical program in 1979.⁸⁷ At this time, UCLA was becoming more consistent in appointing its entry-level clinical faculty to the regular tenure-track Acting Professor series rather than to the Adjunct Professor series.⁸⁸ Once again, Berkeley was

⁸⁷ See Carrie Menkel-Meadow, *The Legacy of Clinical Education: Theories About Lawyering*, 29 CLEV. ST. L. REV. 555, 560 & n.34 (1980). Professor Menkel-Meadow was appointed, effective July 1, 1979, with the title "Adjunct Professor." She came to UCLA with the understanding that her title would be regularized to that of "Acting Professor." This change occurred effective July 1, 1980. E-mail from Carrie Menkel-Meadow, Professor of Law, Georgetown University Law Center, to the author (Aug. 2, 2002, 17:22:19 EST) (on file with the author).

⁸⁸ UCLA had appointed one clinical faculty member as an Acting Professor in 1970, while another held the title Adjunct Professor through the 1970s. E-mail from Jonathan Varat, Dean, UCLA School of Law, to the author (Aug. 28, 2002, 12:38:48 PST) (on file with author). Each of the UC law schools handled the status and title of its clinical faculty differently during the period under discussion in this paper. The beginning of Clinical Legal Education is commonly dated to 1967, with the creation of the Council on Legal Education for Professional Responsibility (CLEPR) and its Ford-Foundation-funded clinical programs. See Robert L. Bogomolny, *Prefatory Remarks to Symposium: Clinical Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345, 345 (1980). UCLA was the first UC law school, and among the first nationally, to grant clinicians full faculty status. Hastings reserves four positions in its regular tenure and tenure-track faculty for clinical faculty. In addition, it has a Clinical Professor series with three positions and a separate category that satisfies ABA Standard 405(c) (defined below) with three positions for full-time clinical faculty. The faculty appoints candidates to the Clinical Professor series, but not to the 405(c) category. Clinicians in the 405(c) category are not required to produce scholarship, nor do they have faculty voting rights. E-mail from Mary Kay Kane, Dean, Hastings College of the Law, to the author (Aug. 28, 2002, 14:40:21 PST) (on file with author). Davis began offering clinical externships in 1969, which were supervised by regular faculty members who usually offered a seminar or class component. When the school began to offer in-house clinics during the late 1970s, it began its current practice of having Lecturers serve as "Supervising Attorneys" who work directly with the students under the supervision of a tenure-track faculty member who acts as director of each clinic. A tenure or tenure-track faculty member serves as the overall Director of the Clinical Program. The Lecturer series does not carry full faculty rights, although several Lecturers have Security of Employment. E-mail from Rex Perschbacher, Dean, U.C. Davis School of Law, to the author (Aug. 29, 2002, 16:55:16 PST) (on file with author). Berkeley initially also used the Lecturer series for its clinicians. In 1998, the school appointed a tenured faculty member as Director of its newly created Center for Clinical Education. In 2001 the Berkeley faculty adopted a separate clinical track for its clinical faculty, which satisfies Standard 405(c). Writing in 1980, William Pincus, often referred to as the "father of clinical legal education", remarked that "[l]aw schools have not established personnel systems for clinic teachers which give the clinic teacher the hope of a career and some kind of security. Most clinic teachers are shut off from the classroom teacher's tenure system and have nothing of their own to substitute for it." William Pincus, *Prefatory Remarks to Symposium: Clinical Education and the Legal Profession*, 29 CLEV. ST. L. REV. 348, 349 (1980). As Neumann observed in 2000, "[c]linical and legal writing teachers are the only fields in which significant numbers of teachers are hired outside of the conventional tenure track." Neumann, *supra* note 9, at 327. The ABA has created Standard 405(c) for full-time clinical faculty, which requires law schools to

last to hire women faculty during this period. After having been the first ABA/AALS school in the country to appoint a woman Assistant Professor to its regular faculty in 1923, Berkeley was the only UC law school that continued its pattern of appointing one woman at a time for the next sixty-five years.⁸⁹ Following Barbara Armstrong's retirement in 1957, Berkeley had only four active women faculty at the end of the 1970s: Babette B. Barton, a Berkeley graduate who had begun teaching part time in 1961;⁹⁰ Marjorie M. Shultz, another Berkeley graduate who began as an Acting Professor in 1976;⁹¹ Eleanor Swift, a Yale graduate who came to Berkeley from law practice in 1979;⁹² and myself, from Chicago.⁹³

Thus, three of Berkeley's first five women law professors were graduates of the school, by far the largest number of inbred women faculty at any of the UC schools.⁹⁴ The group of fourteen early women law professors who began teaching before 1960 also exhibits this characteristic.⁹⁵ All of the fourteen, except for Soia Mentschikoff, were

provide them with "a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members." See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, 405(c), 35-36 (2001 Ed.). Neumann points out that "[a]lthough from a clinician's point of view, Standard 405(c) treatment is better than no protection at all, it is less secure and inferior in other ways to the conventional tenure system." See Neumann, *supra* note 9, at 327 (going on to show in Table 11 at 329, that as of Fall 1998 male clinicians enjoyed more secure status than women clinicians: 59% of men, but only 41% of women held conventionally tenured or tenure-track positions; 43% of men, but 57% of women were covered by ABA Standard 405(c); and 39% of men, but 61% of women did not hold either tenure, tenure-track, or 405(c) positions). Because I have limited my study of women law professors to those who have regular faculty tenure or tenure track status, see *supra* note 27, only the UCLA clinical faculty and Professors Bea Moulton and Kate E. Bloch, who hold two of the four tenured slots reserved for clinical faculty at Hastings, are included in my count of UC women law faculty.

⁸⁹ Berkeley did not appoint more than one woman in the same year until 1988, when Angela Harris and Reva Siegel joined the faculty as part of a group of five entry-level faculty who came at the same time. See *supra* note 28.

⁹⁰ Professor Barton, a Berkeley graduate in the Class of 1954, found that the job market offered her few opportunities, as "there was almost not a single law firm in San Francisco who would hire a woman." Interview with Babette Barton, Professor of Law, University of California, Berkeley, School of Law, in Berkeley, Cal. (Dec. 13, 1989) (transcript on file with author). She had married a fellow student from the Class of 1953, Robert Barton, and they practiced together in the firm of Barton & Barton from 1958-65. *Id.* During that period, she had three small children and was not ready to teach full time until 1966. *Id.*

⁹¹ See *supra* note 28.

⁹² See *id.*

⁹³ See *id.*

⁹⁴ See *id.*

⁹⁵ Professor Armstrong was the first of the fourteen early women, so she is included in

hired by a law school where they had been students.⁹⁶ Barbara Armstrong at Berkeley was the only one of the first four UC women who was hired by her own school, but two of the six women who immediately followed those first four also fit that description.⁹⁷ The two women are: Vivian Deborah Wilson, the second woman at Hastings and a graduate of the school and Susan Westerburg Prager, one of the group of three who followed Barbara Brudno at UCLA, was an alumna.⁹⁸ Two more of these six women, Carol Bruch at Davis and Alison Grey Anderson at UCLA, were graduates of Berkeley.⁹⁹

Davis is the only UC school that has never hired one of its women graduates to the tenure or tenure-track faculty.¹⁰⁰ Given its short time lag and its relatively small size compared to the other UC law schools, the Davis faculty hiring pool in the early 1970s did not have many Davis women graduates. Interestingly, however, this difference continues today.¹⁰¹ Nevertheless, Davis's choice of Professor Bodenheimer provided an advantage similar to that which comes with hiring alumnae: she was a known quantity to the faculty, not as their student, but as the wife of their colleague, Edgar Bodenheimer. Table 1 shows the number of faculty women hired by the UC law schools between 1900 and 1979.¹⁰²

both groups discussed in this paragraph.

⁹⁶ Professor Nelson earned her L.L.M. from USC, the school that hired her, but her J.D. was from UCLA. See *supra* note 28.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See *infra* note 111.

¹⁰⁰ Davis hired its first graduate, Professor Daniel L. Simmons (Class of 1971) as an Acting Professor in 1976. See *supra* note 28. The school has hired several of its women graduates as full-time Lecturers, including Margaret Z. Johns, Class of 1976 (hired in 1980), who taught courses in the regular curriculum and became a Lecturer with Security of Employment in 1995; Antonia E. Bernhard, Class of 1982 (hired in 1982); Debra Lyn Bassett, Class of 1987 (hired in 1996); and Amagda Perez, Class of 1991 and Leslie Knight, Class of 1993, who are both part of the clinical faculty. *Id.*

¹⁰¹ See Fossum, *supra* note 25, at 907-08 (noting that those women who entered tenure-track teaching before 1966 or between 1972 and 1975 were significantly more likely than men to have been academically inbred; adding that the proportion of inbred women has dropped from 100% in 1950 [N = 5 women] to 55% in 1960 and to 26 percent in 1975).

¹⁰² The classification of law schools presented here in Tables 1, 7, and 8, is drawn from a list of twelve "producer" schools identified by Professor Richard K. Neumann, Jr., as those schools, based on their LSAT scores, "that appear likely to graduate a high proportion of the law faculties of the future." Neumann, *supra* note 9, at 318-19 & tbl. 4 (listing the twelve schools in the following order: Yale, Harvard, Chicago, NYU, Columbia, Stanford, Berkeley, Michigan, Duke, Georgetown, Virginia, and Pennsylvania). An earlier list of twenty "producer" schools was prepared in 1980 by Donna Fossum, who identified the schools that had graduated the most law professors. See Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 507 & tbl. 4 (1980) (according to Fossum's list, the eight additional schools are Cornell, Illinois, Iowa,

Table 1. FACULTY WOMEN HIRED: 1900 – 1979

HIRING	HASTINGS	BERKELEY	UCLA	DAVIS
Year Founded	1878	1894	1949	1965
Years from Fnd To 1st	95	29	19	6
Years from 1st to 2nd	3	37	4	1
Total hired	6	5	6	6
CREDENTIALS				
Alumnae	1	3	1	0
JD other UC	1	0	2	2
JD top 5 privates	2	2	1	0
JD other 6 producers	1	0	1	0
Advanced degree	0	1	0	0
U.S. S. Ct. Clerk	0	0	1	1
EIC Law Review	0	0	2	1
Priv. Practice 3+ Yrs	0	2	1	1
Prior Teaching Experience	2	0	0	3
APPOINTMENT LEVEL				
Tenure-Track Entry	5	5	6	5
Tenure-Track Lateral	1	0	0	0
Tenure	0	0	0	1

Each of UC's first four women law professors had experienced disruptions in their personal lives before they were well launched on their academic careers. For instance, Brigitte was forced to flee from Germany with her family in 1933.¹⁰³ Relocation to another country had

Minnesota, Northwestern, Texas, George Washington, and Wisconsin.). In Tables 1, 7, and 8, I distribute Neumann's twelve "producer" schools across three categories: "Top five privates" are Chicago, Columbia, Harvard, Stanford, and Yale. According to Neumann's numerical ranking, NYU, rather than Stanford, would be among the top five private schools. The "[o]ther six producers" are Duke, Georgetown, Michigan, New York University, Pennsylvania, and Virginia. Berkeley, which is one of Neumann's producer schools, is included either as "Alumnae" [of Berkeley] or as "Other UC" [for the other three UC schools].

¹⁰³ See Carol S. Bruch, *April 6, 1979: To Professor Brigitte M. Bodenheimer, Emerita - In Tribute*, 12 U.C. DAVIS L. REV. ix, xi & n.6 (1979). This may be the only poem published with 24 footnotes.

interrupted Brigitte's law studies at Heidelberg; however, she was able to complete her Dr. Jur. in 1934. Brigitte then embarked on an American law degree at Columbia, which she completed in 1936 at the University of Washington after her marriage to Edgar Bodenheimer in 1935. They had three children, Peter, Tom, and Rosemarie. The Bodenheimer family moved to Utah, where Edgar joined the University of Utah law faculty in 1946, and relocated a second time to California in 1966. As discussed more fully below,¹⁰⁴ it was not until 1972 that Brigitte achieved the security of a full-time tenured professorship at Davis. As Professor Carol Bruch has observed, speaking both of the years before and after that appointment, Brigitte "reached her crowning professional achievements during her years here at Davis."¹⁰⁵

Except for Brigitte, all three of the first four UC women were divorced in the early years of their careers. Two of them were left with small children, and one moved across the country following her divorce. These personal disruptions, even when representing sound decisions and creating opportunities for growth, probably also hindered, at least for a time, their professional success.

2. Performance

Once they had gained entry to the faculty, how did these early women go about learning their job of teaching and scholarship? What institutional obstacles did they face, and what factors may have facilitated their progress? A great deal must have depended on the reception they received from their new colleagues. Not surprisingly, a voluminous literature has emerged on the significance of role modeling and mentoring for women and people of color entering professions dominated by white males.¹⁰⁶ Both role models and mentors are crucially

¹⁰⁴ See *infra* text accompanying notes 124-26.

¹⁰⁵ See Carol S. Bruch, *In Memoriam: Brigitte M. Bodenheimer*, 14 *FAM. L. Q.* vii, viii (1981).

¹⁰⁶ See Elizabeth Vrato, *COUNSELORS 189-97* (2002) (interviewing Judge Norma Shapiro); Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, 2001 *A.B.A. COMMISSION ON WOMEN IN THE PROFESSION*, 16-17, 35; Kathryn Abrams, *Hiring Women*, 14 *S. ILL. U. L.J.* 487, 488-89 (1990) (stressing the importance of providing female role models for law students of both sexes). See also Joyce Anne Hughes, *Neither a Whisper Nor a Shout*, in *REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS* 90 (J. Clay Smith, Jr. ed., 1998) 9 & n.55 (noting that "simply seeing a Black woman law professor means other Blacks may be assisted to consider it a career option," adding that six black law professors were her students after she joined the Northwestern faculty, and observing that "I did nothing to assist any of them to obtain law teaching positions and make no claim that I caused them to choose law teaching. Yet I do believe my presence helped them to see law

important to success in any field of endeavor, even for insiders. Role models are experienced and adept old-timers, who show newcomers by example how to ply their common trade. Mentors may also be role models, but usually they go beyond mere example to enter into a more personal, nurturing, and career-facilitating relationship with their protégés. The term "old boy network"¹⁰⁷ remains an apt short-hand expression of a practice traditionally used by senior male partners in law firms and professors in academic institutions to groom their young male protégés to follow in their footsteps.¹⁰⁸ Role models and mentors are particularly valuable in intellectual and professional pursuits where the newcomer's success largely depends on the approval of those who are the established leaders in the field. While the intellectual brilliance of some mentors may be so daunting as to inhibit the achievements of those who seek to emulate their accomplishments,¹⁰⁹ the more successful ones

teaching as a viable career option, if only subconsciously."); Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 U.S.F. L. REV. 747, 752-53 & n.10 (1997) (discussing her observations as a student of Professor Hughes at Minnesota law school from 1971-74, and noting that even though the white faculty "probably hoped that she would make it", "[s]he was both the only woman and the only black and there was no way, no matter what she did, that she could have made it at that school."). *But see* Anita L. Allen, *On Being a Role Model*, 6 BERKELEY WOMEN'S L.J. 22, 33-42 (1990-91) (pointing out the negative implications of the argument that black women law professors should be hired to teach at predominantly white law schools so that they can serve as role models for black students).

¹⁰⁷ See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 178 (2d ed. 1993) (observing in her profile of Wall Street lawyers that "[n]owhere is the 'old boy' network so characteristic of the formal and informal structure of an occupation as in the 'establishment bar;' nowhere is tradition more important and the impact of background status so pertinent both to recruitment and to the style of doing work."). *See also* CYNTHIA FUCHS EPSTEIN, *DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER* 153-58 (1988) (discussing informal barriers against women in the workplace, including networks).

¹⁰⁸ *See* Zenoff & Lorio, *supra* note 27, at 896 ("[a]nother factor adversely affecting the number and prestige of women is the 'old boy' network. Although not consciously discriminatory, it perpetuates female invisibility and the perception that women are less capable than men.").

¹⁰⁹ Nobel Laureate Arno Penzias has kindly provided an apt example, based on his association as a student with UC Berkeley Nobel Laureate Charles Townes. He reports:

I had the great good fortune to have Charles Townes as a mentor. Little, if any, of what I have achieved in my professional life would have been possible without his timely help and far-sighted guidance. Already a world-famous scientist when I was still a struggling graduate student, he helped me overcome my early failures, became my Ph.D. thesis advisor, introduced me to radio astronomy, and pointed me toward Bell Labs.

Unfailingly modest and never one to trumpet his achievements, he nonetheless left me with a recurring problem. Whatever my accomplishments, his were so much greater. I couldn't shake the feeling that I hadn't done as well as I should

usually manage to soften the negative impact of their own forbidding records by frequent reassurances and encouragements to their followers.

In discussing UC women law professors, I will look at role modeling and mentoring at two points during their careers: first, when the woman was a law student, and second, when she was a newly-appointed member of the UC law faculty. Who were the professors who may have served as role models for these women and/or mentored and encouraged them to enter law teaching? Once appointed to the UC law faculty, who were their faculty colleagues who may have been role models and/or mentors who helped them learn how to become teachers and scholars? In the case of a woman who was hired by her own alma mater, these role models and mentors may be the same person. If so, a difficult transition period may occur while the woman's former professor learns how to accept her as a colleague rather than as a student.¹¹⁰ In examining the performance of the women hired at the UC law schools before 1980, I will initially look at the careers of the first four women and then at those of the six women who immediately followed them on the faculties of these four schools.¹¹¹

Only one of the first four UC women had been a law student at a school with women on the faculty: Barbara Brudno at UCLA, who had graduated from Berkeley in the Class of 1967.¹¹² Both Professor Babette

have. What to do? I couldn't change reality. Finally, I remembered a psychiatrist's advice, to time bad behaviors rather than try to cut them out entirely. It really worked. The next time I found myself brooding about my shortcomings, I imagined my friend the psychiatrist saying, 'So, you're beating yourself up again not being Charlie Townes. That's fine. How long do you plan to do that this evening?' Framed that way, the question seemed simple. These days, the 'answer' turns out to be a few minutes. I still admire Charlie tremendously, and he still continues to astonish me with what he does, but now I can look to his example for inspiration without fretting as I once did." E-mail from Arno Penzias, Venture Partner, New Enterprise Associates, to the author (Apr. 23, 2002, 09:45:00 PST) (on file with author). Dr. Penzias won the Nobel Prize in 1978 for the discovery of evidence supporting the Big Bang theory of the origin of the universe. Dr. Townes won in 1964 "for fundamental work in the field of quantum electronics, which has led to the construction of oscillators and amplifiers based on the maser-laser principle." *Id.*

¹¹⁰ Cf. Fossum, *supra* note 25, at 909 (reviewing commentary in academic fields outside law suggesting that inbreeding has its disadvantages, such as lower productivity than noninbred scholars, possibly resulting from the fact that "their old ties to their professors inhibit the development of a sense of independence and personal innovation") (citing Lowell L. Hargens & Grant M. Farr, *An Examination of Recent Hypotheses about Institutional Inbreeding*, 78 AM. J. SOC. 1381, 1400 (1973)).

¹¹¹ Because UCLA appointed three women in 1972, the number of women who immediately followed the first four is six rather than four. See *supra* note 28.

¹¹² *Id.*

Barton and I were on the faculty when Barbara was a student. She took Family Law from me, and I supervised her law review comment on a topic that encompassed two of my subjects, California Marital Property and Conflict of Laws.¹¹³ She had strong support from both her male and female professors in seeking a judicial clerkship and in being appointed to the UCLA law faculty. In contrast, the first woman law professor at Berkeley, Barbara Armstrong, also a Berkeley graduate, had no women teachers who could serve as role models or mentors.¹¹⁴ Alice Daniel, the first woman at Hastings, graduated from Columbia in 1963, a school that did not have a woman faculty member until Ruth Bader Ginsburg, from Rutgers, began teaching there in 1972.¹¹⁵ Brigitte Bodenheimer, the first woman at Davis, graduated from the University of Washington in 1936 at a time when the school had no women on the faculty.¹¹⁶ Nor were there any women on the law faculty at the University of Heidelberg, where she earned her first law degree in 1934.¹¹⁷

Thus, with the exception of Barbara Brudno, these first four women law professors, as law students, had no female role models. If they were mentored at all, they had to have been mentored by their male professors. Alice Daniel spent the four years after her 1963 graduation working for two Columbia professors. As an Associate in Law at Columbia from 1963 to 1965, she taught legal writing to first year students in the fall semesters and undertook other projects in the spring semesters. During the spring of 1964, she offered a seminar in Constitutional Law. In the spring of 1965, she assisted Professor Marvin Frankel in a seminar on Civil Liberties law. From 1965 to 1966, she worked as a research assistant to Professor Herbert Wechsler, who had been the Chief Reporter for the Model Penal Code.¹¹⁸ Her work with

¹¹³ See Comment, *Marital Property and the Conflict of Laws: The Constitutionality of the "Quasi-Community Property" Legislation*, 54 CAL. L. REV. 252 (1966) (providing a critical analysis of *Addison v. Addison*, 62 Cal. 2d 558, 399 P.2d 897, 43 Cal. Rptr. 97 (1965), which upheld the legislation). The Comment is signed "Barbara Brudno Gardner."

¹¹⁴ See *supra* note 28.

¹¹⁵ See *id.*

¹¹⁶ Marjorie Dick Rombauer, the first woman law professor at the University of Washington, was appointed an Assistant Professor in 1964. See *id.*

¹¹⁷ E-mail from Erik Jayme, Professor Dr. Dr. *honoris causa multus*, University of Heidelberg, to the author (Aug. 14, 2002, 10:04:55 EST) (on file with author) (pointing out that Dr. iur. Marie Luise Hilger, the first woman to join the Heidelberg Law Faculty, did so in Winter 1952-53 and remained on the faculty until Winter 1962-63).

¹¹⁸ See Sanford H. Kadish, *Fifty Years of Criminal Law: An Opinionated Review*, 87 CAL. L. REV. 943, 948 (1999) (describing the Model Penal Code as "the most consequential criminal code in the history of Anglo-American law"). The Code had been promulgated in 1962, and was in the process of consideration by the states between 1962 and 1983. *Id.*

Frankel and Wechsler was consistent with her plan to become a civil rights and criminal defense lawyer. Despite the similarity of her interests with those of Wechsler and Frankel, however, no mentoring relationship developed from their work together. She served from 1967 to 1970 as an Associate Appellate Counsel for the Criminal Appeals Bureau of the New York Legal Aid Society, where she worked with Rena Uviller. Uviller's husband, Richard, became familiar with Daniel's work in his capacity as head of the Manhattan District Attorney's office. After joining the Columbia law faculty in 1969, Professor Richard Uviller subsequently recommended her appointment at Hastings.¹¹⁹ At Legal Aid, Daniel had represented indigent criminal defendants in appeals and collateral remedies, handling over fifty cases in both state and federal courts. Her interest in these matters continued after her relocation to California in 1970, when she accepted a position with the NAACP Legal Defense and Educational Fund, doing criminal litigation and consultation and working on a project devoted to prison reform and the expansion of prisoners' constitutional rights.¹²⁰

Barbara Armstrong earned three degrees at Berkeley: an A.B. in 1913, a J.D. in 1916, and a Ph.D. in Economics in 1921. While there were no women faculty at the law school during her student days, she had a formidable female role model elsewhere on the campus. Jessica Blanche Peixotto graduated from Berkeley in 1894 and became only the second woman to earn a Ph.D. there in 1900.¹²¹ Appointed in 1904 as a Lecturer, she was promoted to Professor of Social Economics at Berkeley in 1918, the first woman to hold that rank in the University, and served as the Chair of the Department of Economics from 1921 to 1922.¹²² She recruited both Barbara Armstrong and Emily Huntington into Economics, and, along with Professors Ira B. Cross and Felix Flugel,

¹¹⁹ Professor Richard Uviller wrote to Dean Marvin J. Anderson on February 23, 1972, pointing out that Daniel was "an unusually well qualified person" and stating his opinion that "hers is the sort of fertile mind which will develop and present valuable academic and scholarly offerings." Letter from Professor Richard Uviller to Dean Marvin J. Anderson (Feb. 23, 1972) (quoted by permission of Dean Mary Kay Kane). In addition, she came to Hastings with the strong support of Professor Richard Powell, the senior 65er at Hastings at the time, who had taught at Columbia from 1921-58. E-mail from Professor Crawford, *supra* note 71.

¹²⁰ See Alice Daniel, *Curriculum Vitae* (1972) (copy on file at Hastings College of Law; used with permission of Dean Mary Kay Kane). See also Letter from Alice Daniel to the author (Oct. 7, 2002) (copy on file with author).

¹²¹ See CLARKE A. CHAMBERS, PEIXOTTO, in JESSICA BLANCHE, 3 P-Z NOTABLE AMERICAN WOMEN 1607-1950, A BIOGRAPHICAL DICTIONARY 42-43 (Edward T. James, et al. eds., 1971).

¹²² See *supra* note 28.

supervised Armstrong's Ph.D. work in Social Economics.¹²³

Brigitte Bodenheimer's career was closely intertwined with that of her husband, Edgar. They first met while they were students in Heidelberg in the 1930s, but their relationship did not begin until they encountered each other again in the Columbia law library. They married in 1935 and went to the University of Washington, where he started law school and she transferred from Columbia. In 1946, she accompanied him to the University of Utah, where he joined the law faculty there. Utah's nepotism rules prevented her from being considered for an academic appointment, and she "became active in a wide range of professional activities — as an attorney, as a special litigator for the State of Utah, as the drafter of retirement laws for teachers and public employees in Utah and Wyoming, and as the author of a highly regarded and still widely used manual for justices of the peace."¹²⁴ Sixteen years later, Utah's attitudes toward nepotism had mellowed sufficiently to permit Brigitte to teach there as a Lecturer, and in 1964 Utah formally waived its nepotism rules to permit her appointment as Associate Professor of Law.¹²⁵ She had barely begun her new academic career at Utah when Edgar was invited to become a member of the founding law faculty at Davis. Because of the nepotism policies of the UC system, Brigitte once again was not given a faculty position. Instead, she received an office and an unsalaried position as Research Associate in Law. This time it took six years before she was allowed to teach as a Lecturer and an additional year before the rules were waived to permit her appointment as Professor of Law in 1972.¹²⁶

Because each of these four women was the first on her respective faculty, any mentoring she received necessarily had to come from her male colleagues. But their situations differed greatly, both as to their maturity and their prior experience. As we have seen, only one of them, Barbara Brudno, began teaching immediately after graduation from law school.¹²⁷ At twenty-seven, she was also the youngest of the four when she was hired. If seniority in rank, experience in practice, and maturity in age suggest a relative lack of need for mentoring, then the other three women may have been less in need of such collegial support than she.

¹²³ See Dzuback, *supra* note 23, at 609.

¹²⁴ See Carol Bruch et al., *Brigitte Marianne Bodenheimer*, IN MEMORIAM 41 (University of California, 1985).

¹²⁵ *Id.* at 42.

¹²⁶ *Id.* See also *infra* notes 224-30 and accompanying text for further discussion of dual academic career couples.

¹²⁷ See *supra* note 28.

Brigitte Bodenheimer, already an established teacher and scholar when she joined the Davis faculty at the age of sixty, was ready to, and did, mentor others.¹²⁸ Alice Daniel was in her late thirties when she joined the Hastings faculty in 1973,¹²⁹ and had six years of experience in public interest criminal litigation and civil rights practice. Despite her extensive experience and great interest in this field, Alice Daniel was assigned to teach two six-unit courses in Contracts during her first year as an Associate Professor at Hastings. While she was struggling to master this new field, she spoke frequently with her colleague, Associate Professor James Crawford, who was teaching Contracts for the second time.¹³⁰ By her second year on the faculty, however, she had managed to teach in her preferred field. Daniel taught five units of Criminal Law in addition to two three-unit courses in Contracts and was negotiating to teach Advanced Criminal Procedure. She had been scheduled to teach five units of Criminal Procedure and a new three-unit course in Sentencing, Corrections, and Post-Conviction Remedies from 1974 to 1975, when she decided to leave teaching to return to practice. Reflecting on her years at Hastings, Alice Daniel wrote, "I felt that I was well treated at Hastings. I left because by then I had realized that I was not a scholar."¹³¹ Barbara Armstrong was thirty-three when she became an Assistant Professor at Berkeley.¹³² As noted earlier,¹³³ even though she had no women colleagues on the law faculty, she had a female role model and mentor in the Berkeley Department of Economics, where she had earned her Ph.D. in 1921.

The professional success of these four women as academics also varied greatly. As I have discussed, Alice Daniel left teaching for practice after two years, while another, Brigitte Bodenheimer, had been a tenure-track faculty member at Utah before becoming a tenured full professor at Davis in 1972.¹³⁴ Barbara Nachtrieb Armstrong and Barbara Brudno, however, successfully advanced through the academic ranks from Assistant Professor to tenured appointments as full Professors at their

¹²⁸ She had also come from an academic family. Her father, Ernst Levy, held a Chair in Roman Law at the University of Heidelberg beginning in 1928. See Bruch, *supra* note 103 at xi & n.5.

¹²⁹ She graduated from Boston University in 1958 with an A.B. in philosophy. See *supra* note 120.

¹³⁰ E-mail from Professor Crawford, *supra* note 71.

¹³¹ See Letter from Alice Daniel, *supra* note 120. After a stint at the U.S. Department of Justice, Alice Daniel returned briefly to teaching at Georgetown. *Id.*

¹³² See *supra* note 28.

¹³³ See *supra* note 123 and accompanying text.

¹³⁴ See *supra* note 28.

respective schools.¹³⁵ Ten years after achieving tenure at UCLA, Barbara Brudno moved on to Brooklyn in 1982 and left teaching in 1985.

Two of UC's first women, Barbara Armstrong and Brigitte Bodenheimer, were exceptionally distinguished in their fields. Armstrong's first teaching assignment as a Lecturer in 1919 was a course in School Legislation in California,¹³⁶ one of the school's "academic courses," rather than part of its three-year professional curriculum. The course was normally taught by Professor William Carey Jones, the School's Director,¹³⁷ and had been offered while she was a student at Berkeley. She continued to teach this course until 1925, when it was dropped from the curriculum and she began teaching in one of the areas in which she ultimately specialized, Family Law and Community Property, offering a course called "Persons."¹³⁸ This course had not been taught while she was a student, but was offered shortly after she graduated. In 1928, when Armstrong taught at Berkeley full-time, she offered three courses: two in the professional curriculum, "Persons," and "Industrial Law," and one in the academic curriculum, The Law and Problems of Poverty.¹³⁹ Her first book, published in 1932, was about the legislative evolution of a living wage program and dealt comprehensively with minimum wage plans, worker's compensation schemes, social health insurance, old age and disability insurance, survivors' insurance and unemployment insurance.¹⁴⁰ In 1934, she was given a leave of absence to go to Washington, D.C. to work on the Social

¹³⁵ *Id.*

¹³⁶ See UNIVERSITY OF CALIFORNIA SCHOOL OF JURISPRUDENCE ANNOUNCEMENT FOR 1919-1920 13 (U.C. Press 1919).

¹³⁷ See UNIVERSITY OF CALIFORNIA SCHOOL OF JURISPRUDENCE ANNOUNCEMENT FOR 1913-1914 13 (U.C. Press 1913) (describing the course as "an interpretative and critical study of California school law as a resultant of social and political conditions and forces").

¹³⁸ See UNIVERSITY OF CALIFORNIA SCHOOL OF JURISPRUDENCE ANNOUNCEMENT FOR 1925-26 14 (U.C. Press 1925) (describing the course as including "the relations of parent and child; husband and wife; divorce; community property, with special reference to California law").

¹³⁹ See UNIVERSITY OF CALIFORNIA SCHOOL OF JURISPRUDENCE ANNOUNCEMENT FOR 1928-29 13, 15, 17 (U.C. Press 1928) (describing Law and Poverty as a six unit course taught in both semesters, with the first semester covering "sources of California law; courts of California; fundamentals of law governing domestic relationships; children in industry; dependent, defective and delinquent children" while the second semester covered "fundamentals of law governing relationships of landlord and tenant; employer and employee; public institutions for relief of indigents; and miscellaneous laws of importance in social work." Industrial Law was a third year course that covered "the law governing industrial relations, including Workmen's Compensation Acts.").

¹⁴⁰ See BARBARA NACHTRIEB ARMSTRONG, INSURING THE ESSENTIALS: MINIMUM WAGE PLUS SOCIAL INSURANCE - A LIVING WAGE PROGRAM (1932).

Security Act as Chief of Staff for Social Security Planning of the Committee on Economic Security. She published her authoritative two-volume work on family law in 1953.¹⁴¹

Brigitte Bodenheimer taught a course at Utah in her specialty, Family Law, but she also taught Criminal Law and two commercial law subjects there, Sales and Secured Transactions, as well as Bills and Notes. In 1965, Governor Rampton appointed her a Commissioner from Utah to the National Conference of Commissioners on Uniform State Laws, a post she resigned from when she moved to California.¹⁴² In 1967, the Commissioners hired her to be the Reporter for the Uniform Child Custody Jurisdiction Act (UCCJA), which was promulgated in 1968.¹⁴³ As Carol Bruch stated in a footnote to her *Poem in Tribute*¹⁴⁴ read at Brigitte's retirement celebration on April 6, 1979, this Act . . .

amply demonstrates Professor Bodenheimer's unusual ability to shed years of traditional thought by cutting directly to the core of a problem. In the face of polar, albeit simultaneous, doctrines of custody jurisdiction under in personam and in rem rubrics, . . . she opted for a form of forum non conveniens that is defined with reference to factors that promote the court's ability to enter a substantively sound order. . . . The resulting custody order is given heightened protection in other jurisdictions, again for substantive reasons.

The UCCJA, however, contained a compromise that was struck over Professor Bodenheimer's opposition. Its two main jurisdiction provisions — "home state" jurisdiction and "significant connection" jurisdiction — were alternatives to each other.¹⁴⁵ As she had foreseen, this failure to give jurisdictional priority to the child's home state allowed continued conflict between state courts in child custody determinations.¹⁴⁶ She understood that an effort to amend the UCCJA

¹⁴¹ See BARBARA NACHTRIEB ARMSTRONG, CALIFORNIA FAMILY LAW (1953).

¹⁴² See Bruch, *supra* note 103, at xii & n.12.

¹⁴³ UNIF. CHILD CUSTODY JURISDICTION ACT § 9 U.L.A., pt. I, 261 (Master Edition 1999).

¹⁴⁴ See Bruch, *supra* note 103, at xiv & n.22. Only the text, not the footnotes, was read.

¹⁴⁵ See UNIF. CHILD CUSTODY JURISDICTION ACT, *supra* note 143, at 307.

¹⁴⁶ See Brigitte M. Bodenheimer, *Interstate Custody: Initial Jurisdiction and Continuing Jurisdiction Under the UCCJA*, 14 FAM. L. Q. 203, 211 (1981) (noting the potential for jurisdictional conflict that exists if both the new home state and the former home state (relying on its "significant connection") choose to assert jurisdiction); see also Brigitte M. Bodenheimer, *Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CAL. L. REV. 978, 988-89 (1977) (deploring the tendency of states where the child has been retained for six months or more as a visitor or a victim of abduction to assert jurisdiction to modify the

would probably prove unavailing. Instead, she turned to her friends in the U.S. Congress to seek a federal remedy. She argued that Congress, utilizing its power to prescribe the effect of one state's judicial proceedings in the courts of sister states, should provide that Full Faith and Credit would be extended to a custody decision only if the initial decree had been rendered by the child's home state, or in the absence of a home state, by the state of significant connection. This approach was ultimately adopted by the Parental Kidnapping Prevention Act of 1980 (PKPA),¹⁴⁷ and has worked effectively to substantially reduce, if not eliminate, jurisdictional conflict in interstate child custody litigation. In 1999, as if in tribute to Professor Bodenheimer's far-sightedness, the home state priority provision was enshrined in the revised Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).¹⁴⁸ Early indicators are that, this time around, some courts are getting the message that home state priority is essential for uniformity.¹⁴⁹

Once the UCCJA was in place among the states of the United States, Professor Bodenheimer turned her attention to the international level. She was appointed a U.S. delegate to the Hague Conference on Private International Law, which completed the Final Act of its Convention on the Civil Aspects of International Child Abduction on October 25, 1980.¹⁵⁰

I turn now to the careers of the six UC women faculty who were appointed immediately after the first four. My knowledge of whether and how these four women mentored or served as role models for their junior women colleagues is somewhat uneven. I have several wonderful stories from both Carol Bruch and Jean Love about how effectively they were mentored by Brigitte Bodenheimer at Davis, which are set out below.¹⁵¹ I can, of course, draw on my own experience with Barbara Armstrong at Berkeley. I know a bit about Hastings from Dean Mary

initial decree rendered by the home state).

¹⁴⁷ Pub. L. No. 96-611, § 8(a), 94 Stat. 3569 (1980) (codified at 28 U.S.C.A. § 1738A (c)(2)(A) & (2)(B) (2001)). See Carol Bruch, *In Memoriam: Brigitte M. Bodenheimer*, 14 FAM. L.Q. vii, ix (noting that Brigitte Bodenheimer learned of the enactment of the PKPA shortly before her death on January 7, 1981).

¹⁴⁸ UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 9 U.L.A., pt. IA, 649, §§ 201 (a) (1) & (a) (2), and cmt. (Master Edition 1999).

¹⁴⁹ See *Welch-Doden v. Roberts*, 42 P.3d 1166, 1173 (Ariz. Ct. App. 2002) (resolving a statutory conflict between two sections of the UCCJEA in favor of an interpretation designed "to strengthen (rather than dilute) the certainty of home state jurisdiction").

¹⁵⁰ See Brigitte M. Bodenheimer, *The Hague Draft Convention on International Child Abduction*, 14 FAM. L.Q. 99 (1980) (discussing drafting process and objectives of Convention); see also *Convention on the Civil Aspects of International Child Abduction*, 15 FAM. L.Q. 149 (1981) (reprinting the text of the Convention).

¹⁵¹ See *infra* notes 153-54 and accompanying text.

Kay Kane and Professor Emeritus James Crawford, my Berkeley colleague, who was an Associate Professor at Hastings at the time, and about UCLA from former Dean Susan Westerburg Prager.

After explaining that her first impression, which she later corrected,¹⁵² was that Brigitte Bodenheimer's path to a faculty appointment at Davis had been smoothed by her marriage to Edgar, Jean Love thus described her relationship with Brigitte:¹⁵³

Why did it take me so long to understand that Brigitte was the first true trailblazer at Davis? Because, in her own humble way, she never told me the story of her life. Instead, she played the role of my "professional mother in residence," worrying about me whenever I stayed at the office too late or arrived at the office too early; asking me when (if ever) I would be done with my first tenure piece; telling me not to write my second tenure piece on the topic of the sterilization of mentally retarded women; and reluctantly approving the topic I finally chose — whether courts should recognize a cause of action for the loss of an injured parent's or child's society and companionship. She was also, and very importantly, my silent partner in the struggle that was waged in all institutions in the 1970s to determine just how to provide appropriate bathroom facilities for the women who had recently been admitted to the professional ranks! I cannot tell you how proud I am that Brigitte Bodenheimer was my "trailblazer," nor how thankful I am that she was there for me when I needed a "professional mother in residence," nor how grateful I am that, to this very day, I have always had an image of a professional couple that I could use as a model for myself.

Carol Bruch's account of how she developed as a teacher, scholar, and public servant under Brigitte Bodenheimer's tutelage is deeply immersed in the substance of Family Law and the Conflict of Laws — subjects they both mastered, reformed, and brought to new levels of understanding, both in this country and abroad. Carol reports that:

Brigitte was a mentor in every sense of the term from the moment I arrived in Davis. She encouraged my first planned family law article. . . . She was also the person who responded to my report of a talk I'd given on cohabitation law by encouraging me to file an amicus brief before the California Supreme Court in the *Marvin*

¹⁵² See *infra* note 227 and accompanying text.

¹⁵³ E-mail from Jean C. Love, Professor of Law, University of Iowa Law School, to the author (Feb. 21, 2002, 07:15:09 CST) (on file with author).

case. And, as the deadline neared, she volunteered to write the introduction and conclusion of the brief.

We also spoke frequently about her work on child abduction (ranging from articles about the UCCJA's implementation to the drafting of the Hague Convention on the Civil Aspects of International Child Abduction) and her work on travel restrictions . . . I think she was probably instrumental in my invitation to serve as a consultant on marital property reform from the California Law Revision Commission. . . . She also introduced me to colleagues abroad as I planned my first stay in Germany and insisted that I join the International Society of Family Law. And it was she who pushed and guided me into public service, . . . Then she took me along to get involved in lobbying before the state legislature — showing me how to provide written testimony and support it with oral testimony.

As this [abbreviated] recounting suggests, the entire course of my career (as teacher, scholar, and contributor to public service) was shaped by her. Our personalities were very different, but our values and goals were remarkably similar. From Brigitte, I learned attention to detail, first rate scholarship, the importance of common sense, and how to make the world a better place. I miss her dreadfully.¹⁵⁴

My own memories of Barbara Armstrong are not unlike those of Carol and Jean about Brigitte Bodenheimer. I cannot imagine what life would have been like for me if Barbara Armstrong had not been at Berkeley. She was still teaching, as a Professor Emerita, and updating her California Family Law treatise when I arrived in the late summer of 1960. She continued to work in her Boalt Hall office until the mid-1970s. I was scheduled to teach two of her courses, Family Law and California Marital Property, and a third course in the area of my primary research interest at that time, the Conflict of Laws. I had taken courses in both Family Law (from Max Rheinstein) and Conflicts (from my mentor, Brainerd Currie), but the civil law subject of community property was not part of Chicago's common law property curriculum, and I knew nothing about it. No problem. Barbara undertook to teach the subject to me, often moments before I taught it to my own students. It was and

¹⁵⁴ E-mail from Carol S. Bruch, Professor of Law, U.C. Davis School of Law, to the author (Feb. 16, 2002, 22:47:42 PST) (on file with author).

remains the practice at Berkeley to assign only one course, rather than the normal two, to entering law teachers during their first semester at the school. In the fall of 1960, I taught California Marital Property to seventy-four students who, I hoped, were blissfully unaware that their new professor had just spent the hour before class taking tea with Professor Armstrong and being coached on the assignment. Barbara generously made available to me her mimeographed class materials (there were no published casebooks that she was willing to use), as well as her hypothetical problem cases that I distributed to the students in advance to use as the basis for class discussion. California Marital Property was then a required course at Berkeley and was divided into two sections. My class list for fall of 1960 contained seventy-three men and one woman — Kathryn Mickle Werdegar, now a Justice on the California Supreme Court. That fall, the school had a student body of 573, of whom about 3 percent were women,¹⁵⁵ and a full-time active faculty of twenty, of whom I was the only woman. Like others of my generation, I had been among a handful of women students — four, to be exact — when I entered the University of Chicago law school in 1956. The four of us were fortunate enough to have begun our studies at one of the seven law schools that currently had one woman on the faculty.¹⁵⁶ By the time we graduated in 1959, three other schools had added one woman,¹⁵⁷ and one progressive school — the University of Miami — had two women. I enjoyed the unique experience of having been taught by a woman professor — Soia Mentschikoff — and then of being mentored by a woman colleague — Barbara Armstrong — at a different school where I began teaching. This experience, of course, has since been replicated by others, including Professors Carol Bruch, Jean Love, and Sandra Terzian, each of whom studied with women law professors and who then became Brigitte Bodenheimer's colleagues at Davis.

Professor Babette Barton, who joined the Berkeley faculty as an Acting Professor in 1966, was mentored by her male teacher in Federal Taxation, Professor Adrian A. Kragen. Both were Berkeley law graduates. Both had practiced law before beginning their academic careers, he with Loeb

¹⁵⁵ See SANDRA P. EPSTEIN, *supra* note 13, at 223, 320.

¹⁵⁶ See Kay, *supra* note 2, at 8. By 1956, eleven schools — Berkeley, Chicago, Louisiana State University, Baylor, Harvard, Miami, Seton Hall, Loyola of Los Angeles, Yale, Georgetown, and Loyola of New Orleans — had at one time appointed a woman to the faculty, but three had retired and our professor, Soia Mentschikoff, had moved from Harvard to Chicago in 1951.

¹⁵⁷ *Id.* These three schools were USC, Ohio State University, and the University of Wisconsin.

and Loeb in Los Angeles from 1944 to 1952, she in partnership with her husband in the firm of Barton and Barton in Oakland from 1958 to 1965. Kragen joined the Berkeley faculty in 1952, when Barton was a second year student.¹⁵⁸ When he became Vice Chancellor of the Berkeley campus in 1960, he had to reduce his teaching load to half-time.¹⁵⁹ Kragen told me that Babette had “graduated number one in her class, and she went out and nobody wanted to hire her.”¹⁶⁰ When he needed someone to take over the Business Tax Seminar, Kragen persuaded Babette to do it, and then he persuaded the faculty to make her an offer to teach part-time.¹⁶¹ Babette accepted, and taught at Berkeley as a Lecturer from 1961 to 1965.¹⁶² When she joined the faculty in 1966, she followed his example and became a specialist in Federal Taxation.¹⁶³

Alice Daniel, the first woman at Hastings, had no opportunity to mentor the women who came after her because she left before the second woman, Vivian Deborah Wilson was hired. Vivian did, however, share Alice's interest in Criminal Procedure and Civil Rights, initially taking over her courses in those subjects.¹⁶⁴ At any event, Vivian Wilson may not have needed mentoring from a younger colleague. She had earned her law degree at Hastings in 1969, twenty-five years after her graduation from Hunter College in 1944, and was in her mid-fifties when she began law teaching.¹⁶⁵ Her interests were not bounded by the law. She told me in 1990 that she was engaged in producing her version of the play *MEDEA* at Hastings, using law students as actors. She thought, and I believe she was right, that this event was a first for law schools. She added that she hoped to return to another project she had had on the back burner — writing the story of the women at Hastings during “those at times horrendous years from about 1976 to 1980.”¹⁶⁶ To my

¹⁵⁸ See *supra* note 28.

¹⁵⁹ *Id.*

¹⁶⁰ Kragen Interview, *supra* note 71. Professor Barton has a different recollection, pointing out that she never actually “went out,” since no one was willing to interview her, despite her excellent credentials, once they learned her gender. Barton Interview, *supra* note 90.

¹⁶¹ Kragen Interview, *supra* note 71.

¹⁶² See *supra* note 28.

¹⁶³ Her initial subjects were Accounting, Decedent's Estates, Estate Planning, Future Interests, Federal Taxation, and Trusts and Estates.

¹⁶⁴ Professor Wilson's specialties were Criminal Law and Evidence.

¹⁶⁵ See *supra* note 28.

¹⁶⁶ Letter from Vivian Deborah Wilson, Professor of Law, Hastings College of the Law, to the author (Feb. 12, 1990) (on file with author). This letter was written in response to my request to women law professors attending the 1990 AALS annual meeting in San Francisco to help me with my project by writing down their favorite stories.

knowledge, that project never came off the back burner, and Vivian, sadly, has now died.

Mary Kay Kane told me that Vivian was not a mentor to any of the junior faculty. Instead, she was seen as something of a “maverick,” identifying herself more as a playwright than as a legal scholar or teacher.¹⁶⁷ Although she did not say so, I imagine that Dean Kane herself probably functioned as an effective mentor to the three younger women who came to Hastings about the same time that she did. She taught for three years at Buffalo from 1974 to 1977 before moving to California and no doubt had learned the ropes there.¹⁶⁸ She and Professor Virginia Leary, who subsequently joined the Hastings faculty in 1998, overlapped at Buffalo for a year.

Susan Westerburg Prager, a 1971 graduate of UCLA, took Barbara Brudno’s course in Poverty Law, describing it as an “extremely well done and challenging course,” as well as two other classes, a Torts seminar and an independent study course.¹⁶⁹ Susan described how Barbara was “a fabulous mentor” to her during law school. Furthermore, during the interview process for law teaching, Prager praised Brudno as “wonderfully encouraging, supportive, and had good practical advice.”¹⁷⁰

Neither of the other two women who came to UCLA with Susan Prager in 1972 had been one of Professor Brudno’s students, and had less contact with her as junior colleagues. My understanding is that the three of them essentially mentored each other — an experience that once again shows the importance of hiring more than one woman at a time.

One of these women, Alison Grey Anderson, reports that she was the first faculty member at the school to become pregnant. Here is her account of how the students reacted to her distinctly atypical professorial

¹⁶⁷ E-mail from Mary Kay Kane, Dean, Hastings College of the Law, to the author (Feb. 20, 2002, 13:21:19 PST) (on file with author).

¹⁶⁸ Josephine King, the first woman law professor at Buffalo, joined the faculty in 1965 as an Assistant Professor after having graduated from the school in that year and having served as Editor-in-Chief of the Buffalo Law Review. She became an Associate Professor in 1967, and left Buffalo in 1969, before any other women joined the faculty. Marjorie L. Girth came to Buffalo in the spring of 1971 as a Visiting Associate Professor, and was appointed Associate Professor there in the fall of 1971. She was promoted to full Professor in 1979. Dean Mary Kay Kane remembers Professor Girth as “the senior woman at Buffalo at the time” when she joined the faculty. See E-mail from Dean Mary Kay Kane, Dean, Hastings College of the Law, to the author (July 26, 2002 18:52:35 PST) (on file with author).

¹⁶⁹ E-mails from Susan Westerburg Prager, Professor of Law, UCLA School of Law, to the author (Feb. 21, 2002, 13:52:53 PST & July 5, 2002, 13:52:29 PST) (on file with author).

¹⁷⁰ E-mail from Susan Westerburg Prager, *supra* note 169 (referring to e-mail dated Feb. 21, 2002).

condition:¹⁷¹

During winter and spring 1977, I taught my classes with an ever more obvious pregnancy. My students thought it was fascinating. During the spring quarter I found an apple on my podium every day at the beginning of class — I don't know whether there was a single donor or several. On the last day of class (mid-June — Charlie was born July 11), I entered the classroom to find the table and podium literally overflowing with fruit — at least half the class must have brought an apple, orange, melon, etc. I was "Professor of the Year" that year and spoke at graduation in late June, about two weeks before giving birth. Again, my condition was commented on during the graduation ceremonies and seemed to be a topic of great fascination. My students from that year always comment on my pregnancy when I run into them today. I think a pregnant law professor just seemed incongruous to students.

3. Retention

a. Tenuring

The four UC law schools hired twenty-three tenure or tenure-track women between 1900 and 1979. Table 2 shows the outcome for the tenure-track women and the time to tenure for each school.

Table 2. TENURING: 1900 – 1979

	HASTINGS	BERKELEY	UCLA	DAVIS
HIRED	6	5	6	6
• With Tenure	0	0	0	1
• Tenure Track	6	5	6	5
TENURED	3	5	5	4
Average Time (yrs)	3.7	7.6	4.6	4.5
• Longest	5	13	5	5
• Shortest	1	3	4	4
NOT TENURED*	3	0	1	1
* includes all who did not receive tenure, including all who left before seeking tenure, and all who were not evaluated for tenure				

¹⁷¹ Alison Grey Anderson, My Story (Jan. 1990) (on file with author).

Three of the women hired in the 1970s left UC after only one or two years in teaching. Two of them, Alice Daniel of Hastings and Sandra Terzian of Davis, left teaching for practice.¹⁷² The third woman, Janet Wright, left UCLA to accept an Assistant Professorship at her alma mater, USC, in 1976 (and later visited at Davis in 1983).¹⁷³ Two others left Hastings without tenure. One, Trina Grillo, moved to the University of San Francisco Law School, where she was tenured in 1995.¹⁷⁴ The other, Paula Downey, left teaching for private practice without having been evaluated for tenure. Apart from these five women, all the other women who joined the faculties at Hastings, UCLA, and Davis in the 1960s and 1970s either were appointed with tenure or were promoted to tenure.¹⁷⁵

At Berkeley, however, two women — Marjorie Maguire Shultz and Eleanor Swift — did not obtain tenure through the regular process. Their cases became publicly known.¹⁷⁶ While both ultimately became tenured professors, the Berkeley faculty did not initially recommend their promotion due to perceived deficiencies in their scholarship. Campus-wide reviewers at Berkeley responded to the first of these two tenure cases by awarding Marjorie Shultz the status of a Lecturer with Security of Employment, a title that did not require scholarship, which she held from 1986 to 1989, when at the Law School's request, she was promoted to Professor of Law. After her negative evaluation in 1987, Eleanor Swift filed a grievance with the Berkeley Academic Senate Committee on Privilege and Tenure, which made a *prima facie* finding of gender discrimination entitling her to a full hearing before the Committee on her claim. Ultimately, no hearing was held before the Committee. Instead, in settlement of her grievance, an external *ad hoc* committee was selected to review her case. The Chancellor accepted the committee's determination that she met the University's criteria for tenure and she became Professor of Law in 1989. At the same time, the Berkeley law faculty requested that Marjorie Shultz also be granted tenure and promoted to Professor of Law.

¹⁷² See *supra* note 28.

¹⁷³ *Id.*

¹⁷⁴ See *infra* note 242 and accompanying text (referring to Professor Grillo's observations about the tenuring of women of color).

¹⁷⁵ See *supra* note 28.

¹⁷⁶ See Paul D. Carrington, *Accreditation and the AALS: The Boalt Affair*, 41 J. LEGAL ED. 363 (1991); Betsy Levin, *The AALS Accreditation Process and Berkeley*, 41 J. LEGAL ED. 373 (1991); Marjorie M. Shultz, *Debating P.C. on "PC,"* 41 LEGAL ED. 387 (1991); Paul D. Carrington, *Response to Levin and Shultz*, 41 LEGAL ED. 393 (1991); Eleanor Swift, *Becoming a Plaintiff*, 4 BERKELEY WOMEN'S L.J. 245 (1990).

Even before these two cases were considered, at least seven tenure-track white men hired at Berkeley during the 1960s and 1970s left without obtaining tenure. Three of these men had come and gone before Marjorie Shultz was hired in 1976. Four others were contemporaries of Marjorie Shultz and Eleanor Swift.¹⁷⁷ Not all of these men were formally evaluated for tenure, and one of them obtained tenure at another law school.

The two irregular cases at Berkeley explain the longer average time to tenure at that school (shown in Table 2), as well as the longest time (thirteen years). The longest time to tenure at the other three UC schools is the same: five years. Because one of the Hastings women (Professor Mary Kay Kane) was given credit for her teaching experience at Buffalo, where she began her academic career, that school's average time to tenure is shorter than that of UCLA and Davis. Thus, fifteen of the twenty-three women who were appointed to the UC law faculty between 1900 and 1979 achieved tenure in the regular course, while two acquired tenure through irregular processes, and five left UC without tenure. Subsequently, one of these latter five received tenure at another law school while four left teaching altogether.

b. Raiding

None of the women hired during this period resigned before 1980 to accept offers elsewhere. In 1982, however, Barbara Brudno left UCLA for Brooklyn, and two of the Davis women left towards the end of the decade to go to other schools.¹⁷⁸ Thus, Georgetown successfully recruited Emma Coleman Jordan in 1987, and Susan Fletcher French went to UCLA in 1989. As mentioned earlier, a third Davis woman, Jean Love, went to Iowa in 1991.

4. Flourishing

The first group of UC women law professors were an exceptionally distinguished lot. Many of them were hired with superb credentials. Thus, fifteen had graduated from one of Neumann's twelve producer schools;¹⁷⁹ one had a Ph.D. in Economics; three had been the Editor-in-Chief of their school's Law Review; two had been U.S. Supreme Court clerks; four had three plus years in practice; and five had prior teaching

¹⁷⁷ See *supra* note 28.

¹⁷⁸ *Id.*

¹⁷⁹ See *supra* note 102 (describing my use of Neumann's twelve "producer" schools).

experience at other schools.¹⁸⁰

Their subsequent careers fulfilled this early promise. Among this first group of UC faculty are four of the seven women who have served as President of the Association of American Law Schools, one from each of the four schools: Susan Westerburg Prager of UCLA in 1986; myself in 1989; Emma Coleman Jordan of Davis (but of Georgetown at the time of her Presidency) in 1992; and Mary Kay Kane of Hastings in 2001.¹⁸¹ Two served as President of the Society of American Law Teachers (SALT): Emma Coleman Jordan from 1986 to 1988 and Jean Love (who served with Pat Cain as Co-President) from 1994 to 1996.¹⁸² Brigitte Bodenheimer and I served as Reporters on different projects for the National Conference of Commissioners on Uniform State Laws, while Mary Kay Kane and Susan Fletcher French are among the five women American Law Institute Reporters whose photographs grace the walls of the Paul Wolkin Conference Center in Philadelphia.¹⁸³ Jean Love chaired the California Law Revision Commission from 1981 to 1982. Mary Kay Kane and I are current members of the ALI's Council as well as its Executive Committee. Carrie Menkel-Meadow is the current Secretary of the American Bar Foundation; she and I currently serve on the ABF's Board of Directors and its Executive Committee. Susan Westerburg Prager, Mary Kay Kane, and I went on to become the first woman Dean at our respective schools.¹⁸⁴

Four of these women hold Chaired Professorships. They are Babette B. Barton (the Adrian A. Krage Chair at Berkeley); myself (the Barbara Nachtrieb Armstrong Chair at Berkeley); Susan Westerburg Prager (the Arjay and Frances Fearing Miller Chair at UCLA); and Jean Love (the Martha Ellen Tye Professorship at Iowa).¹⁸⁵ Mary Kay Kane has been

¹⁸⁰ See *supra* note 28.

¹⁸¹ Soia Mentschikoff was the first woman President of the AALS. She served in 1974. The other two are Judith Wegner of North Carolina in 1995 and Deborah Rhode of Stanford in 1998.

¹⁸² See *supra* note 28.

¹⁸³ Personal observation of the author (June 14, 2002). One of the remaining three pictured ALI Reporters, Professor Grace Ganz Blumberg, is in the second group of UC faculty discussed below, see *infra* text accompanying notes 288-289, while a second, Dean Katharine T. Bartlett of Duke, is a graduate of Berkeley and was a Visiting Professor at UCLA in 1985-86. The only one of the five who had no connection to UC either as a student or as a faculty member is Soia Mentschikoff. There are several women among the Reporters currently at work on ALI projects; photographs apparently do not go on the wall until the project is completed.

¹⁸⁴ Ellen Rausen Jordan, the first woman Dean at Davis, also began her academic career at the University of Georgia during this period. See *infra* text following note 294.

¹⁸⁵ See *supra* note 28.

named a Distinguished Professor at Hastings and serves her institution as Chancellor as well as Dean.¹⁸⁶ Several of them have distinguished reputations as scholars. I have no hesitation in placing Barbara Armstrong, Brigitte Bodenheimer, and Carol Bruch in that category because, like them, I work in the field of Family Law and feel competent to make that judgment myself. In addition, Jean Love, Susan Fletcher French, Mary Kay Kane, and Carrie Menkel-Meadow have made outstanding names for themselves in Torts, Property, Civil Procedure, and Alternative Dispute Resolution Policy, respectively.

II. THE SECOND WAVE: UC'S WOMEN LAW FACULTY: 1980-2000

By 1980, women's presence in legal education both as students and faculty had become established as a permanent fixture and was poised to increase dramatically by the end of the century. The groundwork for this shift had been laid in the 1960s and 1970s. The rapid increase of women law students began in the mid-1960s,¹⁸⁷ and by 1969, fifty-three women were serving as law professors in ABA/AALS schools.¹⁸⁸ In 1970, the AALS adopted an amendment to its Articles of Association requiring member schools to accord "[e]quality of opportunity in legal education without discrimination or segregation on the ground of race, color, religion, national origin, or sex."¹⁸⁹ By the fall of 1980, women comprised 34.1 percent of the total J.D. enrollment, and by the fall of 2000, they comprised 45.4 percent of the total.¹⁹⁰

¹⁸⁶ *Id.*

¹⁸⁷ See Kay, *supra* note 2, at 11.

¹⁸⁸ *Id.* at 10-12.

¹⁸⁹ See Proceedings of the 1970 Annual Meeting of the Association of American Law Schools, Part Two, at 160 & n.2 (motion amending text of Paragraph 3 of Section 6-1 of Article 6 through addition of words "religion, national origin or sex." Accompanying statement of Approved Association Policy spelled out application of amendment to law school admissions, employment, and placement). The resolution had been proposed by the newly-created Special Committee on Women in Legal Education. *Id.* at pt. 1, 110-111 (noting that Committee was appointed in March 1970, and held its first meeting on April 18, 1970).

¹⁹⁰ See ABA-LSAC, *supra* note 7, at 808.

A. Hiring

1. Appointment Patterns

At UC, the hiring of women law faculty in the last two decades of the twentieth century improved substantially over the earlier period. As Table 3 shows, the number of appointments more than doubled at Hastings and Berkeley, tripled at UCLA, and increased by half at Davis. Once again, I will examine the four career stages of these women faculty.

**Table 3. COMPARISON OF FACULTY WOMEN HIRED:
1900 - 1979 and 1980 - 2000**

HIRED	HASTINGS	BERKELEY	UCLA	DAVIS
1900 - 1979	6	5	6	6
1980 - 2000	14	12	18	9
TOTAL	20	17	24	15

The pattern of these appointments, shown in Table 4, is as significant as their number. Except for Berkeley, the women who came during this second period were hired in pairs or clusters, with time gaps between the appointments. Thus, Hastings appointed six women between 1980 and 1984, hiring them in three sets of pairs.¹⁹¹ A five-year gap followed, after which seven more women joined the Hastings faculty between 1989 and 1993. Except for three women who came together in 1991,¹⁹² all of these women were hired singly in successive years.¹⁹³ Five years later in 1998, Hastings hired its last woman law professor of the twentieth century: Virginia A. Leary, who in an earlier era would have qualified for the 65 Club.¹⁹⁴

A similar hiring pattern occurred at UCLA and Davis. At UCLA, two women joined the faculty in 1980.¹⁹⁵ Two years intervened before two

¹⁹¹ Hastings hired Gail Boreman Bird and Barbara A. Caulfield in 1980. See *supra* note 28. Fern B. Kaplan and D. Kelly Weisberg were hired in 1982; and Margreth Barrett and Melissa L. Nelken in 1984. *Id.*

¹⁹² Kate E. Bloch, Jo J. Carillo, the second woman of color at Hastings, and Mary A. Crossley were hired together in 1991. *Id.*

¹⁹³ Eileen A. Scallen came in 1989, Beatrice A. Moulton moved from her position as Director of Clinical Instruction to become a full professor in 1990, Naomi Roht-Arriza came in 1992, and Radhika Rao, the third woman of color at Hastings, in 1993. *Id.* As pointed out in *supra* note 192, three women came in 1991.

¹⁹⁴ See *supra* text accompanying note 76.

¹⁹⁵ Helen Irene Bendix began teaching in January 1980. See *supra* note 28. Grace

more women were added, one each in 1983 and 1984.¹⁹⁶ After a year, the next group of three women, which included two women of color, was hired together in 1986.¹⁹⁷ They were immediately followed in 1987 by one woman,¹⁹⁸ and by another woman in 1989.¹⁹⁹ Three years went by before the next group of five women joined the UCLA faculty between 1992 and 1995: one each in the first three years of this period and two in 1995.²⁰⁰ Two years intervened before the last four women to be hired at UCLA during the twentieth century joined the faculty between 1998 and 2000, one each in 1998 and 1999, and the final pair in 2000.²⁰¹

At Davis, two women were hired a year apart, in 1981 and 1983.²⁰² After a four year interval, two women were hired, one each in 1988 and 1989.²⁰³ In January 1992, Professor Ellen Rausen Jordan of the University of Georgia came to Davis to become the school's first woman Dean.²⁰⁴ Three years passed before two women joined the faculty in 1995.²⁰⁵ After another three year interval, the final pair of women came to Davis in 1999.²⁰⁶

By contrast, before the late 1980s, Berkeley's pattern of adding women to the faculty had been to hire one woman at a time. Three women were hired in this manner between 1980 and 1983,²⁰⁷ followed by a four-year

Blumberg, who had been in residence at UCLA as a Visiting Professor from Buffalo during academic year 1979-80, was offered and accepted an appointment as Professor of Law at UCLA in 1980, making her the first woman at UCLA to be given a tenured lateral appointment. E-mail from Grace Ganz Blumberg, Professor of Law, UCLA School of Law, to the author (Feb. 13, 2002, 15:20:06 PST) (on file with author).

¹⁹⁶ Christine Littleton came in 1983 and Francis Elizabeth Olsen in 1984. *See supra* note 28.

¹⁹⁷ UCLA's first two women of color, Kimberle W. Crenshaw and Isabelle R. Gunning, as well as Lucie E. White joined the faculty together in 1986. *Id.*

¹⁹⁸ Taimie L. Bryant came in 1987. *Id.*

¹⁹⁹ Susan Fletcher French came in 1989. *Id.*

²⁰⁰ Mari Matsuda, UCLA's third woman of color, came in 1992; Gillian L. L. Lester in 1993; Laura E. Gomez, UCLA's fourth woman of color, in 1994. *Id.* Ann E. Carlson and Jody Freeman both came in 1995. *Id.*

²⁰¹ Seana Shiffrin came in 1998; Cheryl Harris, UCLA's fifth woman of color, in 1999; and Iman Anabtawj and Sharon Dolovich in 2000. *Id.*

²⁰² Leslie A. Kurtz came in 1981 and Martha S. West in 1983. Professor West visited at Davis in 1982. *Id.*

²⁰³ Terry O'Neill came in 1988, and Evelyn Lewis (Kirkland), Davis's first woman of color, in 1989. *Id.*

²⁰⁴ Ellen Jordan was appointed to the Davis faculty in 1991. *Id.* She served as Dean from January 1, 1992 until illness forced her to step aside in the fall semester of 1992. *Id.*

²⁰⁵ Diane Marie Amann and Holly D. Doremus came together in 1995. *Id.*

²⁰⁶ Lisa R. Pruitt and Madhavi Sunder, Davis's third woman of color, came together in 1999. *Id.*

²⁰⁷ Berkeley hired Carol Rose in 1980; Rachel Moran, its first woman of color, in 1982;

gap. Then in 1988 two women were hired²⁰⁸ as part of a group of five entry level faculty who came together in a single year.²⁰⁹ Two more women were hired one at a time in 1989 and 1990.²¹⁰ Two years passed before the last group of five women was hired between 1993 and 1996. Four of these were hired in pairs in 1993 and 1996;²¹¹ the fifth came between the pairs in 1995.²¹²

Table 4. HIRING PATTERNS: 1980 – 2000

YEAR	HASTINGS	BERKELEY	UCLA	DAVIS
1980	2	1	2	
1981				1
1982	2	1		
1983		1	1	1
1984	2		1	
1985				
1986			3	
1987			1	
1988		2		1
1989	1	1	1	1
1990	1	1		
1991	3			1
1992	1		1	
1993	1	2	1	
1994			1	
1995		1	2	2
1996		2		
1997			1	
1998	1		1	
1999			2	2
2000				

and Andrea Peterson in 1983. *Id.*

²⁰⁸ Angela Harris, Berkeley's second woman of color, and Reva Siegel both came in 1988. *Id.*

²⁰⁹ The other three faculty members hired in 1988 were all men of color. *Id.* Of these five, only Angela Harris is currently a member of the Berkeley faculty. *Id.*

²¹⁰ Kristin Luker came in 1989; Gillian Hadfield in 1990. *Id.*

²¹¹ Lauren Edelman and Marina Hsieh, Berkeley's third woman of color, came in 1993; Linda Hamilton Krieger and Pamela Samuelson came in 1996. *Id.*

²¹² Claire Finkelstein came in 1995. *Id.*

Examination of these hiring patterns shows the difference as a matter of attaining critical mass between hiring women singly and in pairs or clusters. Given the mobility of faculty between schools, departures resulting from resignations will often sharply reduce the critical mass of women present in the school at a particular time. When women are hired one at a time, the likelihood that one woman or a small number of women will be isolated on the faculty is much greater than if they are hired in pairs or clusters. Table 5 shows the pattern of women faculty hires and departures due to resignation or death at the four schools between 1980 and 2000.

Table 5. NUMBER OF FACULTY WOMEN TOGETHER BY ACADEMIC YEAR: 1979 - 2000

ACTIVE FACULTY	HASTINGS	BERKELEY	UCLA	DAVIS
FALL 1979	5	4	5	4
1985 - 86	8	6	7	6
1990 - 91	9	10	12	5
1995 - 96	14	11	15	6
FALL 2000	15	12	17	8
HIRED 1980 - 2000	14	12	18	9
DEPARTURES 1980 - 2000	4	4	6	5
ACTIVE 1900 - 2000	20	17	24	15

As Table 5 shows, the four UC schools began the decade of the 1980s with almost exactly the same number of active women faculty: five at Hastings and UCLA, four each at the other two schools. In 1985, there remained a close similarity: Hastings had eight women, UCLA had seven, while Berkeley and Davis both had six. By the mid-1990s, however, UCLA and Hastings with fifteen and fourteen women respectively had pulled away from Berkeley and Davis, which had eleven and six women respectively. It is remarkable that Davis, with a much smaller total faculty, kept up with its three larger sister law schools for so long. Still, perhaps due in part to its relatively small size, Davis never had more than six women on the faculty at one time until 1999, when the school reached its highest total during the twentieth century of eight women.²¹³

²¹³ See *infra* text accompanying note 281 (discussing the pattern of faculty departures).

To be sure, these hiring patterns do not rest entirely within the discretion of the individual law schools. In the UC system, permission to recruit and hire tenure and tenure-track faculty is granted by the central campus administration,²¹⁴ and is in turn dependent on the availability of faculty positions which are funded by the State of California as part of the University President's budgetary request.²¹⁵ The UC President then allocates faculty positions and accompanying state funding to the Chancellors of the nine UC campuses, who in turn distribute these resources among the various schools and departments.²¹⁶ Once a law school has received permission to fill a faculty position, the school is free to make its own selection among candidates in its hiring pool to present to the campus for final approval.

²¹⁴ See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, UNIVERSITY OF CALIFORNIA: SOME CAMPUSES AND ACADEMIC DEPARTMENTS NEED TO TAKE ADDITIONAL STEPS TO RESOLVE GENDER DISPARITIES AMONG PROFESSORS, REPORT NO. 2000-131, at 37 & fig.6 (2001) (giving an overview of the typical steps UC campuses follow in hiring professors, beginning with the "call" letter from the Campus Executive Vice-Chancellor to the departments, and ending with the final decision of the Chancellor whether to hire the candidate at the approved offer).

²¹⁵ E-mail from Mary Kay Kane, Dean, Hastings College of the Law, to the author (July 5, 2002, 07:47:05 PST) (on file with author).

Hastings, as an affiliate of UC, is not budgeted through the University but as a separate, line-item budget. Thus, each year, we present our proposed budget to the Department of Finance for inclusion in the Governor's January submission to the legislature and then the Dean testifies at the Assembly and Senate Higher Education Budget Committees regarding our requests, typically on the same day as the President testifies for UC. Consequently, the determination of the number of faculty positions that may be available turns on the number of positions set out in the annual budget. That number has not changed for several years, and when budget cuts have been made in the last decade they were made as a function of dollars, not positions. Thus, Hastings is left with the discretion to decide whether to fill all of its positions at any one time or generate salary savings to fund other necessary elements of the program.

²¹⁶ The campuses have some degree of latitude as to how they manage their state resources. At Berkeley, for example, the Legislature rarely creates new faculty positions (known as Full-Time Equivalents or FTE) for the campus. As a result, the Berkeley Chancellors, beginning with Chancellor Albert Bowker in the mid-1970s began the practice of reclaiming FTE vacated by separation of tenure faculty due to resignations, retirements, or deaths, and reallocating them to the units based on their FTE budget requests, the advice of the Academic Senate Budget Committee, and other campus priorities. This means, for example, that if a tenured law school professor resigns, retires, or dies, permission to fill the vacant position will not be granted automatically. Instead, the school must compete with other campus units to regain the lost FTE. Significantly, this practice is not applied to the departure of a non-tenured faculty member who is not granted tenure. In that case, the FTE remains with the school and a new recruitment is authorized. See *Exhibit A: I & R Faculty FTE Budget Guidelines For Appointment Year 2003-04*, POLICIES AND PRACTICES (U.C. Berkeley, Berkeley, Cal.) May 16, 2001, at 1-2 (on file with author).

Even this decision, however, is not without constraints. On July 20, 1995, the Regents of the University of California approved two resolutions, known as SP-1 and SP-2, which forbade the use of affirmative action in admissions, hiring, and contracting at the University.²¹⁷ In November 1996, California voters approved an anti-affirmative action measure known as Proposition 209, which amended the State Constitution and effectively restricted the ability of state agencies, including UC, to "grant preferential treatment" to any individual or group based on race, sex, color, ethnicity, or national origin in public employment, public education, or public contracting.²¹⁸ In the five-year period from academic year 1995-96 to academic year 1999-00, the percent of women hired by the UC system declined sharply from 36 percent of all hires in academic year 1995-96 to 24 percent in academic year 1999-00.²¹⁹ At the three campus-based law schools, Berkeley, UCLA, and Davis, the percent of women hired declined from 71 percent of all hires in academic year 1995-96 to 40 percent in academic year 1999-00.²²⁰ California State Senator Jackie Speier, Chair of the Senate Committee on Government Oversight, has held annual hearings since 2001 to scrutinize UC's faculty hiring practices.²²¹ The matter is pressing since the UC

²¹⁷ See MINUTES OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA 1-33 (July 20, 1995).

²¹⁸ See CAL. CONST. art. I, § 31(a); Herma Hill Kay, *The Challenge to Diversity in Legal Education*, 34 IND. L. REV. 55, 62-72 (2000) (discussing both the Regents' Resolutions and Proposition 209). The UC Regents rescinded SP-1 and SP-2 by RE-28, May 16, 2001, stating that "some individuals perceive that the University does not welcome their enrollment at its campuses" and noting that "the University has complied with and will be governed by Article 1, Section 31 of the California Constitution by treating all students equally in the admissions process without regard to their race, sex, color, ethnicity or national origin, and by treating employees and contractors similarly." MINUTES OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA 1-7 (May 16, 2001), available at <http://www.ucop.edu/regents/minutes/2001/board1601.pdf>. Because of the continued existence of Article 1, Section 31 (Proposition 209), UC's ability to target and hire women faculty and faculty of color remains limited.

²¹⁹ See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, *supra* note 214, at 79 & tbl. 9 (showing that the percentage of women hired at UC in 1997-98, before Proposition 209 became effective, was 32%, and that this percentage declined to 26% in 1998-99); see also Martha S. West, *Faculty Women's Struggle for Equality at the University of California Davis*, 10 UCLA WOMEN'S L.J. 259, 314-16 (2000) (discussing the post-209 "drastic decline" in women hired at Davis, from 34.9% of all new faculty in 1997-98 to 15.9% in 1998-99); *Newsletter # 1: Hiring Equity at UC*, CAL. ACADEMICS FOR EQUITY (CAFE), Oct. 26, 2001 (e-mail from Professor Gyogny Laky to the author (Mar. 6, 2002, 19:00:53 PST)) (on file with author) (describing the hearings held in 2001 and 2002 before Senator Speier's Committee).

²²⁰ See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, *supra* note 214, at 84-88 & tbl. 13.

²²¹ See *Newsletter # 1: Hiring Equity at UC*, *supra* note 219 (listing several UC women law faculty who testified at 2001 hearing, including Professors Angela Harris and Marjorie Shultz of Berkeley, Carole Goldberg of UCLA, and Martha West of Davis); see also

system, which employs approximately 8000 professors, expects that it will need to hire 7000 new faculty over the next ten years.²²² Despite the constraints imposed by state law, UC, as a federal contractor, remains subject to federal affirmative action requirements.²²³

2. Dual Academic Career Couples

The entry of women into the legal profession, as well as into other male-dominated professions and academic disciplines, was followed by the appearance of dual career couples who hoped to combine family life with their professional work.²²⁴ Women who are part of a dual academic career couple may experience special difficulties in the hiring process. At the university level, faculty positions are often limited, and a department's ability to obtain help from another school or department in "placing" one member of a dual academic career couple elsewhere on campus to attract the other one may become the decisive factor in a successful recruitment. When both members of the dual academic career couple are seeking positions as law professors, the difficulties may become intensified.

The number of dual academic career couples who hold faculty appointments at the same law school, while increasing, probably is still quite small. Addressing this subject in 1979, I identified only twenty-three such couples.²²⁵ Between 1900 and 2000, the UC law faculty had five dual academic career couples at the same school: three at Berkeley, and two at Davis. If this category is enlarged to include couples who both held positions at different UC law schools during that period, the total number increases to six by adding one couple with one member at

Newsletter # 2 (e-mail from Professor Gyogny Laky to the author (June 25, 2002, 22:59:14 PST) (on file with author) (noting that Senator Speier has scheduled a third hearing for January 2003).

²²² See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, *supra* note 214, at 1.

²²³ *Id.* at 34; West, *supra* note 219, at 260 & n.2.

²²⁴ See Timothy D. Chandler et al., *Spouses Need Not Apply: The Legality of Antinepotism and No-Spouse Rules*, 39 SAN DIEGO L. REV. 31, 32-33 (2002) (noting that during 1970s and 1980s, increased proportions of women have pursued careers in traditionally male-dominated markets, and that this trend has "increased the percentage of dual-earner families in the United States"). The authors conclude that "claims that antinepotism and no-spouse rules are sex neutral ignore the real-life employment experiences of married women." *Id.* at 69. Further, the authors point out that implementation of these rules "is likely to disproportionately burden women who are most likely to be seen by employers as less committed to their jobs and careers, since they tend to bear a larger burden of family responsibilities." *Id.* at 69.

²²⁵ See Kay, *supra* note 1, at 224-25.

Hastings and the other at Berkeley.²²⁶ In 1979 the pattern that prevails today of couples going on the law school market together had not yet fully emerged. Instead, the experience of the Bodenheimers at Utah and Davis was more typical. Edgar was hired as a regular member of the law faculty at both schools while Brigitte found other professional work to occupy herself, joining each of the two faculties as its first woman faculty member years later. As Jean Love's account of her reaction to joining the Bodenheimers at UC Davis attests, junior faculty may underestimate the difficulty dual academic career couples confront of finding two suitable law faculty positions in the same geographic area.²²⁷

When I first arrived at Davis in fall 1972, I was young and naive and

²²⁶ See *infra* note 230 (identifying six UC law faculty dual academic career couples). It would be possible to expand this list much farther by including four other sub-categories of dual academic career couples. First, couples where one member holds a UC law school appointment and the other holds an academic appointment at the same UC campus, but in another department or school. Second, couples where one member holds a UC law school appointment and the other holds a faculty appointment at a law school outside the UC system. Third, where one member holds a UC law school appointment and the other member holds a faculty appointment at another UC campus. Fourth, where one member holds a UC law school appointment and the other member holds a faculty appointment at another university. While I have not attempted to count the couples, who would fit these four additional sub-categories of dual academic career couples, the UC law schools offer examples of each of them. In the first sub-category is Professor Kristin Luker, who holds a joint appointment on the Berkeley law faculty and in the Department of Sociology, while her husband, Professor Jerome Karabel, is in the Berkeley Sociology Department; in the second sub-category are Professor Terry O'Neill, who was at Davis for one year while her husband, Professor Thomas Carbonneau, was a faculty member at the Tulane Law School, and Professor Jean Love, who was on the Davis law faculty while her partner, Professor Patricia Cain, was on the Texas law faculty; in the third sub-category is my husband, Dr. Carroll M. Brodsky, who was a member of the UCSF Department of Psychiatry and myself; and in the fourth sub-category is Professor Jeremy Waldron, who was on the Berkeley law faculty while his partner, Professor Carol Sanger, was on the Columbia law faculty. Obviously, if the broader category of dual career couples were used, where one member is an academic on a UC law faculty and the other member is a non-academic professional, the list would become much larger. I have not explored how many other UC law faculty would be added to the list if this broader definition were used. One apt illustration, however, comes from UCLA, where Helen I. Bendix, who joined the faculty in 1980, left the school after only a year because her husband, John A. Kronstadt, who had arranged with Arnold & Porter in Washington, D.C., where he was an associate, to continue with the firm while practicing from another small office in Los Angeles, felt that he needed to return to D.C. in order to stay on the firm's partnership track. In 1985, they returned to Los Angeles, where her husband accepted a partnership. Bendix returned briefly to the UCLA faculty as a Visiting Professor in 1985-86, but then accepted a position at Gibson, Dunn & Crutcher. Governor Wilson appointed her to the Los Angeles Municipal Court in 1997. See Susan McRae, *Profile: Judge Helen I. Bendix* DAILY J., Apr. 17, 1998, at 1, reprinted in DAILY JOURNAL CORP., JUDICIAL PROFILES 2001-4. In January 2000, she was assigned to the Los Angeles Superior Court by unification. *Id.*

²²⁷ E-mail from Professor Jean C. Love, *supra* note 153.

dressed in mini-skirts. (I am now older and wiser and dressed in longer skirts or pants!) Edgar and Brigitte's offices, next door to each other, were just down the hall from mine. I thought it had been very easy for Brigitte to get a job because she was Edgar's wife. I thought that I was the true trailblazer: I was the first young woman hired by U.C. Davis whose husband was not a lawyer. Well, I now realize that I was wrong. Brigitte was the first trailblazer. It was not until 1991, when my life partner Patricia Cain and I were hired together at Iowa after seven long years of trying to find jobs at the same law school, that I finally understood what Brigitte and Edgar had gone through in the 1970s. Pat and I now proudly occupy offices next door to each other at Iowa, and every day when I put my key in my door, I think about Edgar and Brigitte in their offices next door at Davis. I am grateful that they were able to get their jobs together, and I am even more grateful that Pat and I were able to get our jobs together.

If the dual academic career couple is successful, however, in finding jobs in the same geographical location, if not always at the same law school, they bring with them a built-in source of support that may compensate in part for the disadvantages of being hired alone. The retention of one member of a dual academic career couple poses problems if both members cannot be accommodated at the same or a nearby institution. In both the first and second time periods discussed here, three of the UC law schools have experienced faculty losses for this reason. Thus, as we have seen, Jean Love and Pat Cain left Davis and Texas, respectively, to accept offers from Iowa in 1991, becoming the first openly lesbian dual academic career couple in law teaching.²²⁸ Terry O'Neill left Davis in 1989 after one year to accept an appointment at Tulane, where her husband, Thomas E. Carbonneau, had been a faculty member since 1980.²²⁹ Mari Matsuda and Chuck Lawrence left UCLA and Stanford, respectively, to accept offers from Georgetown in 1993. At Berkeley, Jeremy Waldron left for Princeton in 1996, moving on to Columbia Law School in 1997 to join Carol Sanger, while Claire

²²⁸ See Ken Myers, *First Appointment of Its Kind: Iowa Hires Openly Gay Couple*, NAT'L L.J., Sept. 9, 1991, at 4 (quoting Iowa Dean William N. Hines: "I don't know whether it is historic. . . . We proceeded very conventionally to treat them both as candidates in their own right [and] they were two of the best people in their respective fields. The fact that they came together and reinforced each others' interest in moving to Iowa was just an added benefit so far as we were concerned. . . . You usually don't have access to senior women with that degree of experience and national prominence. It was an extraordinary opportunity for us.").

²²⁹ Professor Carbonneau visited at Davis in 1988-89. See *supra* note 28.

Finkelstein left Berkeley in 2000 to join her husband, Leo Katz, at Pennsylvania.

Another retention challenge occurs if the couple separates. Berkeley faced this situation twice. Jack McNulty and Babette Barton, who were members of the Berkeley faculty when they married each other, both remained at Berkeley after their divorce. Both have now retired. When Peter Menell and Gillian Hadfield, who were hired together in 1990, were divorced, however, Peter remained at Berkeley while Gillian relocated first to Toronto, and later to USC. Of the six UC law faculty dual academic career couples,²³⁰ only one remained together with both members active on the faculty at century's end: Madhavi Sunder and Anupam Chander at Davis.

3. Women of Color

As the foregoing discussion indicates, all of the UC law schools have appointed women of color as tenure or tenure-track members of the faculty.²³¹ During the period from 1980 to 2000, Hastings, Berkeley, and Davis each appointed three: Trina Grillo, Jo Carrillo, and Radhika Rao at Hastings; Rachel Moran, Angela Harris, and Marina Hsieh at Berkeley; and Emma Coleman Jordan, Evelyn Lewis, and Madhavi Sunder at Davis.²³² UCLA appointed five women of color: Kimberle Crenshaw, Isabelle R. Gunning, Mari Matsuda, Laura E. Gomez, and Cheryl Harris.²³³ Table 6 shows the distribution of the UC women faculty of color appointed between 1900 and 2000.

Table 6. FACULTY WOMEN OF COLOR HIRED: 1900 – 2000

HIRED	HASTINGS	BERKELEY	UCLA	DAVIS
1900 - 1979	1	0	0	1
1980 - 2000	2	3	5	2
TOTAL	3	3	5	3

²³⁰ The five UC dual academic career couples who both held appointments at the same UC law school at the same time are: Berkeley's Babette B. Barton and Jack McNulty, Gillian Hadfield and Peter Menell, and Eleanor Swift and Robert Cole; Davis's Brigitte Bodenheimer and Edgar Bodenheimer, and Madhavi Sunder and Anupam Chander. *Id.* The sixth couple, with one member at Hastings and the other at Berkeley, is Mary Kay Kane and Ronan Degnan. *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

As small as these numbers are, however, when measured by the success of other law schools in appointing women of color, UC's record looks positive. Deborah Jones Merritt and Barbara F. Reskin examined all the entry level tenure and tenure-track faculty hires at accredited law schools for a five year period, between fall 1986 and spring 1991, and found that of the 1094 entry-level faculty hired, only eighty-three, or 7.6 percent, were women of color.²³⁴ Arranging their data by their measure of the institutional prestige of the hiring schools, Merritt and Reskin found that only two women of color gained teaching positions at one of the schools they identified as being in the top sixteen.²³⁵ Berkeley, which is listed among their top sixteen schools, hired one of those two women of color.²³⁶ In all, UC schools hired four of the eighty-three women of color included in Merritt and Reskin's study: one at Berkeley, two at UCLA, and one at Davis.²³⁷

Based on their data, the authors concluded in 1997 that affirmative action hiring policies had not measurably benefitted women of color, who "reaped no net advantages based on their sex or race, and they did not fare as well as white men on several outcomes."²³⁸ The authors went on to note that "[t]hese last findings are particularly troubling because they suggest that minority women face distinctive sex and race biases in the job market."²³⁹ In an earlier report based on the same data set that compared minority men and minority women, the authors found "startling" differences between these two groups in starting rank, employer prestige, and course assignments, disparities that could not be explained by differences in academic credentials, work experience, age, family ties, or geographic constraints. The authors concluded that "[t]he minority men in our study started teaching at significantly higher ranks than the minority women, obtained jobs at significantly more prestigious schools, and were significantly less likely to teach low-status courses at

²³⁴ See Merritt & Reskin, *Sex, Race, and Credentials*, *supra* note 27, at 230 tbl. 1. The remaining hires were 99 men of color, 331 white women, and 581 white men. *Id.*

²³⁵ *Id.* at 237 tbl. 3. Their top sixteen schools, arranged in descending order, were: Yale and Chicago (tied for first); Harvard and Columbia (tied for third); N.Y.U., Michigan and Stanford (tied for sixth); UC Berkeley, Duke, Pennsylvania, Virginia, and Northwestern (tied for eleventh); Georgetown, USC, Cornell, and Texas (tied for fifteenth). *Id.* at 214 n.42.

²³⁶ See *supra* note 208.

²³⁷ The remaining ten UC women of color would not have been included in the Merritt and Reskin group: two because they were hired laterally as full professors, rather than as entry level faculty, and the other eight because they were hired either before fall of 1986 (three women) or after spring of 1991 (five women).

²³⁸ See Merritt & Reskin, *Sex, Race, and Credentials*, *supra* note 27, at 275.

²³⁹ *Id.*

those schools."²⁴⁰

Once they have successfully achieved faculty status, however, women of color must overcome additional hurdles. Several of UC's women of color have written about their experiences as faculty members, either at UC or at schools where they taught before coming to UC or after relocating to other schools. The themes sounded are similar and include mention of the extra burdens borne by women of color in addition to their normal teaching and research obligations, including counseling students of color, advising their organizations, and helping the school recruit and retain them.²⁴¹ A particularly sensitive point is their shared experience of being forced to encounter and deal with the widespread impression held by white law students that faculty women of color are less qualified for their positions than their white male colleagues,²⁴² as well as the insensitivity of their colleagues.²⁴³ It would be surprising if

²⁴⁰ See Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299, 2356 (1992) (adding that "[w]ith the same credentials, work experience, and family constraints, a minority man might teach at Stanford University while a minority woman would teach at the University of Washington; a man might teach at Arizona State while a woman would teach at the University of Puget Sound").

²⁴¹ See Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331, 342 (1992); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503, 508 (1986).

²⁴² See Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 U.S.F. L. REV. 747, 748-51 (1997) (describing what Berkeley graduate Richard Delgado has termed "microaggressions" — remarks directed daily to minority law faculty that "often have a racist or sexist undertone that is not consciously intended; [but which] contain assumptions that diminish us in some way . . ."); Cheryl Harris, *supra* note 241, at 346-47 (noting that "students have assumed and asserted that neither my intellectual qualifications nor teaching abilities could match those of my white male counterparts"); Emma C. Jordan, *Nepenthe*, 6 BERKELEY WOMEN'S L.J. 113, 114 (1990-91) ("I too have heard the spoken and unspoken challenges of disbelieving students who contested my very presence in the classroom.").

²⁴³ See Grillo, *supra* note 242, at 750 ("A colleague in a meeting says: 'We have two constitutional law teachers, and they can advise the university.' In fact, there are three constitutional law teachers and I am one of them. I gently tap his arm and say: 'There are three of us.' He then includes me, but two sentences later goes back to describing our *two* teachers of constitutional law. I am left to wonder whether I have been slighted and, if so, what kind of slight was it. Was it a racist slight? Was it a sexist slight? Or is it simply that I am incorrectly perceived to be less of an expert in the subject matter or that, in fact, the other two teachers have been at the school longer? But then I have to ask: Am I perceived to be less of an expert because I am, or because I would be perceived that way regardless of how much of an expert I am?") (emphasis in original); see also Angela Harris, *Women of Color in Legal Education: Representing La Mestiza*, 6 BERKELEY WOMEN'S L.J. 107, 111 (1990-91) ("A colleague approached me once at a faculty dinner. He had read an article of mine in which I quoted both Jorge Luis Borges and Toni Morrison. He described the article as 'literate.' Then he shook his head. 'I didn't think you could do it,' he said. I didn't know

these impressions were not reflected in student teaching evaluations that have a direct impact on the faculty member's self-esteem, not to mention her future advancement, or if these insensitivities at some level did not affect promotion decisions. Trina Grillo made clear that these attitudes affect the intellectual climate in "insidious" ways:²⁴⁴

[W]e — minority law professors — have a difficult time dealing with our white peers. We are often afraid to show our scholarship to other people because we worry that if they find something wrong with it, they will decide that we are stupid. It also seems dangerous to discuss problems we might be having in the classroom. We feel that when we do that, we show a weakness that may be exploited later. Perhaps we are showing blood, and the vultures will come. Although there have been times when I have had wonderful support for my teaching, there are also times when I have felt that some people were just waiting for me to slip up. This is a very disconcerting feeling.

It seems clear that, at UC and elsewhere, the law school working environment is less hospitable to women of color than it is to other faculty members.²⁴⁵

what to say. Amused by his innocence, disgusted by his honesty, triumphant about my virtuosity: grateful for his attention."); Jordan, *supra* note 242, at 114 ("I have had my share of unpleasant encounters with insensitive, yet well-meaning colleagues.").

²⁴⁴ See Grillo, *supra* note 242, at 753.

²⁴⁵ See Moran, *supra* note 241, at 513 ("Faced with a 'no-win' situation, those minorities and women who presently serve on law faculties will inevitably find their experience a lonely and frustrating one."); see also *Black Women Law Professors: Building a Community at The Intersection of Race and Gender, A Symposium*, 6 BERKELEY WOMEN'S L.J. I (1990-91) (collection of essays written by members of Northeast Corridor Collective of Black Women Law Professors).

Table 7. FACULTY WOMEN HIRED: 1980 - 2000

HIRING	HASTINGS	BERKELEY	UCLA	DAVIS
Total hired	14	12	18	9
CREDENTIALS				
Alumnae	1	3	0	0
JD other UC	3	0	0	1
JD top 5 privates	3	8	10	4
JD other 6 producers	2	1	0	0
Advanced degree	2	3	7	1
U.S. S. Ct. Clerk	1	2	0	1
EIC Law Rev	0	0	0	1
Priv. Practice 3+ yrs	1	3	3	5
Prior Teaching Experience	4	3	7	3
APPOINTMENT LEVEL				
Tenure-Track Entry	10	9	13	8
Tenure-Track Lateral	1	0	1	0
Tenure	3	3	4	1

B. Performance

As we have seen, the early women law professors and some of the women who came immediately after them, were mentored by male faculty. Several among the group of women who began teaching in 1980 show evidence of having been mentored by some of their male, as well as by their female, professors and colleagues. Thus, Professor Gail Boreman Bird, a 1974 Hastings graduate, joined the faculty there in 1980 and began teaching California Community Property. Her colleague, Professor Harold E. Verrall, who had taught the subject at UCLA before coming to Hastings in 1970, and who had published a casebook with Dean Arthur M. Sammis of Hastings in 1966, invited her to co-author the Fourth Edition with him in 1983.²⁴⁶ This sort of collaboration is characteristic of mentoring in the law school world, where successful casebooks can be a source of scholarly prestige as well as additional income.

²⁴⁶ See HAROLD E. VERRALL & GAIL BOREMAN BIRD, *CASES AND MATERIALS ON CALIFORNIA COMMUNITY PROPERTY* (4th ed. 1983). The book was published in its seventh edition in 1999 with Professor Bird as sole author.

At Berkeley, Professor Reva Siegel, who joined the faculty in 1988,²⁴⁷ and whose courses included Contracts, Constitutional Law, and Sex-Based Discrimination, was mentored by three of her colleagues who taught in those areas, Marge Shultz, Robert Post,²⁴⁸ and myself. Professor Claire Finkelstein's work in the Jurisprudence of the Criminal Law owes much to the mentoring she received after she joined the Berkeley faculty in 1995 from her colleague, Professor Sanford H. Kadish, recognized as one of the country's leading scholars in this field.

One measure of successful faculty role modeling and mentoring of students is the number of graduates who themselves choose to become law teachers. Between 1900 and 2000, the four UC law schools graduated 115 women who went into teaching. Table 8 shows the schools where these graduates are currently teaching, or where they were last shown as teaching.²⁴⁹

Table 8. SCHOOLS WHERE UC WOMEN GRADUATES TEACH

SCHOOL	HASTINGS	BERKELEY	UCLA	DAVIS
ALMA MATER	2	6	1	0
OTHER UC	0	8	1	0
PRODUCERS	0	5	0	0
• TOP 5 Privates	0	2	0	0
• Other 6	0	3	0	0
OTHERS	14	42	29	7
TOTAL	16	61	31	7

While it is not possible to identify role modeling and mentoring relationships from the AALS data alone, it is possible to trace some influence from professor to student by comparing their own fields with the fields their students chose to enter once they became faculty members themselves.²⁵⁰ As Table 9 shows, the majority of these women

²⁴⁷ See *supra* note 28.

²⁴⁸ Siegel and Post have published several law review articles together. Among the most influential is Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel*, 110 YALE L.J. 441 (2000).

²⁴⁹ See *supra* note 102 (describing my use of Neumann's twelve "producer" schools). The data in Table 8 are current through 2000, and include both schools where the faculty member is currently teaching and schools where she was last listed as having taught.

²⁵⁰ A similar hypothesis could be offered about the fields chosen by graduates who went into the practice of law. Comparable data to test that hypothesis are not readily available. At any event, the focus of this paper is women law professors rather than

(seventy-three out of 115) graduated before 1980.

Table 9. GRADUATION DATES OF UC WOMEN IN TEACHING

	HASTINGS	BERKELEY	UCLA	DAVIS
Pre-1980	11	39	17	6
1980 – 89	5	19	13	1
1990 – 2000	0	3	1	0
TOTAL	16	61	31	7

As we have seen, twenty-three women were appointed to the UC law faculty before 1980.²⁵¹ A comparison of the subject matter specialties of these twenty-three women faculty with the subject matter areas the seventy-three women graduates chose to enter provides an intriguing, if modest, degree of support for the role modeling/mentoring hypothesis. As Table 10 shows, forty of the seventy-three women, or approximately 55 percent, chose to enter fields that overlapped with the specialty areas of one or more of their women faculty. While it is not possible, without examining course enrollment data, to identify whether a particular woman graduate took the overlapping course from the woman professor, the overlap that exists is still consistent with the existence of role modeling.

Table 10. PRE-1980 UC WOMEN GRADUATES SHOWING SUBJECT-MATTER OVERLAP WITH UC WOMEN FACULTY

	HASTINGS	BERKELEY	UCLA	DAVIS
Grads in Teaching	11	39	17	6
Grads w/o Women Faculty at School	4	1	6	0
Grads with only one Woman on School Faculty	4	2	1	1
Grads with more than one Woman on School Faculty	3	36	10	5
Grads with Potential to have Subject-Matter Overlap	7	38	11	6
Total Grads With Overlap	5	21	8	6

women lawyers.

²⁵¹ See *supra* tbl. 1.

1. Hastings

Because of the long time lag between the date Hastings was founded and the date its first woman, Alice Daniel, was hired,²⁵² there were no women on the faculty when four of the eleven women graduated. Even though Professor Daniel was on the faculty for only two years, 1973 to 1975, four of the remaining seven women were enrolled at Hastings during that time. Two of them, like her, taught Contracts. This overlap is suggestive, but not determinative at Hastings, which has multiple sections of the same course. Thus, as noted earlier, Professor James Crawford also taught Contracts when Alice Daniel joined the faculty and continued to teach it in the same year that she did.

Vivian Wilson joined the faculty in 1976 and taught Criminal Law and Evidence.²⁵³ Trina Grillo, who was at Hastings from 1977 to 1981, taught Constitutional Law and Mediation.²⁵⁴ Of the three women who graduated in 1978 or 1979, one teaches Evidence, and the other two teach either Alternate Dispute Resolution or Mediation.

2. Berkeley

Berkeley's practice of hiring only one woman at a time²⁵⁵ simplifies this analysis for the thirty-nine Berkeley women students who graduated before 1980 and went into teaching. Three of these graduated before 1960, when Barbara Armstrong was the only woman on the faculty. One of these three was Barbara Armstrong herself, who graduated in 1915.²⁵⁶ The other two, Babette Barton and Helen Buckley, both in the Class of 1954, attended Berkeley while Barbara Armstrong was the only woman faculty member. While she may have been a role model for them,²⁵⁷ neither of them took up her subjects. Instead, under the mentorship of their male professor, Adrian Kragen, both went into Federal Taxation.²⁵⁸ Professor Kragen came to Berkeley in 1952 from his tax practice with Loeb & Loeb in Los Angeles.²⁵⁹ As noted earlier, Professor Barton began

²⁵² See *supra* text accompanying note 31.

²⁵³ See *supra* note 28.

²⁵⁴ *Id.*

²⁵⁵ See *supra* text accompanying notes 48-49.

²⁵⁶ See *supra* note 28.

²⁵⁷ See Barton Interview, *supra* note 90 (stating that she worked on a project for Barbara Armstrong while a student).

²⁵⁸ E-mail from Babette B. Barton, Professor of Law, Boalt Hall School of Law, to the author (June 20, 2002, 14:32:01 PST) (on file with author).

²⁵⁹ See *supra* note 28.

her career at Berkeley as a Lecturer from practice, and she took over Kragen's Business Tax Seminar while he was serving as Vice-Chancellor.²⁶⁰ Both Barton and Buckley co-authored law review articles with Kragen.²⁶¹ Helen Buckley went on to become a tax practitioner on the public side with the Tax Division of the U.S. Department of Justice, then served as Tax Counsel on the private side first for Hunt Foods, and later for Norton Simon, ultimately joining a Los Angeles law firm as a tax partner. She entered teaching in Iowa in 1974, going on to Temple in 1982, where she specialized in Federal Taxation.

Of the remaining thirty-six women who graduated after Barbara Armstrong's retirement in 1957, twenty-seven graduated before 1976 when Berkeley had only two women faculty: Babette Barton and myself.²⁶² Three of the twenty-seven went into one of Barton's fields: one specialized in Tax, while a second taught Estate Planning and Taxation,²⁶³ and a third went into Decedents' Estates, a subject that Barton also taught occasionally. Fifteen of the remaining twenty-four graduates taught one or more of my courses in Family Law, California Marital Property, Conflict of Laws, and Sex-Based Discrimination.

Of the six women who graduated between fall of 1976 and spring of 1979, during the period when Marjorie Shultz and Eleanor Swift had joined the Berkeley faculty, one went into Tax while two went into Family Law, Marital Property, and Women and the Law. None of the other three went into the subjects taught by Professors Shultz or Swift.

3. UCLA

Six women graduated from UCLA before Barbara Brudno joined the faculty in 1968. Of the remaining eleven, one (Susan Westerberg Prager) graduated in 1971, while Barbara Brudno was the only faculty woman.

²⁶⁰ See *supra* text accompanying notes 160-63.

²⁶¹ See Adrian A. Kragen & Babette Barton, *The Tax Dilemma of the Entertainer*, 31 S. CAL. L. REV. 390 (1958); Adrian A. Kragen et al., *The Marriage Undone: Taxwise: The Federal Tax Consequences of California Divorce and Separation: Alimony and Property Settlements*, 42 CAL. L. REV. 408, 408 & n.1 (1954) (noting that Professor Barbara Armstrong's 1953 Treatise on California Family Law "inspired this commentary").

²⁶² None of the women who graduated from Berkeley between 1957, when Professor Armstrong retired, and 1960, when I joined the faculty, became law professors. See *supra* note 28.

²⁶³ I am indebted to Lee Ryan, Senior Reference Librarian at USF School of Law, for documenting the fact that Assistant Professor Janet Friedman Stansby, Berkeley Class of 1968, taught Estate Planning and Taxation in 1973-76 when she was on the USF faculty. See University of San Francisco School of Law Bulletin 1973-74, at 21; *id.*, 1974-75, at 22; *id.*, 1975-76, at 22 (on file with author).

As noted earlier, Prager took Brudno's course in Law and Poverty, but she herself did not teach that subject. Instead, she specialized in California Marital Property, Family Law, and California Real Property — all subjects that Barbara Brudno also taught. Between 1972 and 1982, when Professor Brudno left UCLA to go to Brooklyn Law School, and Susan Prager gave up teaching to become Dean of the law school, both continued to teach these subjects as well as others. Of the ten students who graduated before 1980, one went into California Marital Property, a second went into Family Law and also Constitutional Law, another of Professor Brudno's courses. Two went into Property or Real Property.

Both Professor Alison Grey Anderson, who taught Contracts, Corporations, and Torts, and Carole Goldberg, who taught Civil Procedure, and Native American Law and Tribal Systems, joined the faculty in 1972. One of the graduates mentioned above who went into Property also taught Corporations. Of the six remaining pre-1980 graduates, one taught Torts, while three taught Civil Procedure. One of the latter three also taught Constitutional Theory.

4. Davis

Six of the seven Davis women students who went into teaching graduated before 1980, at a time when six women were on the faculty. Of the six students, one who graduated in 1972 went into Family Law, at a time when only Brigitte Bodenheimer was teaching the subject. One teaches Jean Love's subjects of Torts and Gender Bias, while two may have followed Carol Bruch into Contracts. One of these two women also teaches Bankruptcy, a course roughly in one of Professor Emma Jordan's fields, Consumer Finance. Sandra Terzian taught at Davis for only two years, but one student who graduated during that period teaches her subject of Corporations. The sixth graduate teaches two courses, Corporate Finance and Creditors' Rights, which are included within Professor Jordan's general area of Commercial Law, the Payment System, and Financial Instruments.²⁶⁴

An examination of subject matter overlap is more diffuse for the forty-two women who graduated in or after 1980, largely because of the increased numbers of women on the UC faculty. As Table 7 shows,²⁶⁵ fifty-three women were hired between 1980 and 2000. Eighteen of the women hired before 1980 remained active during much of the period.

²⁶⁴ See *supra* note 28.

²⁶⁵ See *supra* tbls. 1 & 7.

Thus, there were seventy-one faculty whose fields could potentially be compared to those chosen by forty-two graduates. Because of doubts about the validity of such an analysis, it will not be attempted here. Nevertheless, a few salient observations can be offered.

At Hastings, two of the five post-1980 women went into one of Professor Gail Boreman Bird's fields, Wills and Trusts and Estates.²⁶⁶ Of the twenty-two Berkeley women, one followed Professor Barton into Tax; seven teach one or more of my subjects of Family Law, Marital Property, and Sex Discrimination; six teach in Professor Eleanor Swift's fields of Civil Procedure or Evidence; three teach Professor Rachel Moran's field of Torts; one followed Professor Angela Harris into Criminal Law; one teaches Professor Marjorie Shultz's subject of Contracts, while another teaches Professional Responsibility; and one went into Professor Andrea Peterson's field of Land Use Planning.²⁶⁷ While Professor Carol Rose taught at Berkeley for only three years, three women who were students between 1980 and 1983 went into her fields of Property and Environmental Law, although male faculty also taught these subjects at the same time.

UCLA had fourteen women on the faculty during the period that the fourteen women who graduated between 1980 and 1990 were students. Yet the subject matter overlap analysis shows matches with only five of these faculty women: Professors Alison Grey Anderson (four graduates); Susan Prager (two graduates); Carole Goldberg (two graduates); Helen Bendix (one graduate); and Carrie Menkel-Meadow (two graduates). The fit between these professors and their students ranges from tenuous, such as that between Bendix who was at UCLA only for one year and the student who went into her subject of Comparative Law, to striking, such as the UCLA graduate who went into Carole Goldberg's unique specialty of Native American Law and Tribal Cultural Property.²⁶⁸

At Davis, the woman who graduated in 1987 teaches courses in fields offered by two Davis women faculty: Professor Carol Bruch's subject of Family Law and Professor Susan Fletcher French's subject of Property.²⁶⁹

In her 1980 study of women law professors, which used data published in the 1975-76 AALS *Directory of Law Teachers*,²⁷⁰ Donna

²⁶⁶ See *supra* note 28.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ See Fossum, *supra* note 25, at 906-07.

Fossum found that women law professors were “overrepresented” in the field of Family Law, noting that a similar pattern had been established in the 1950s and 1960s in which “women law professors appeared to cluster either in law school course areas that were the classroom counterparts of the so-called women’s specialties in law practice”²⁷¹ Fossum seems to imply that women faculty were being relegated to the “women’s subject” of family law. Yet the data presented here tend to support a different explanation: the positive influence of senior women faculty working in the field of family law upon their women students who chose to take up the subject in their own careers. The first woman law professors at three of the UC schools, Barbara Armstrong at Berkeley, Brigitte Bodenheimer at Davis, and Barbara Brudno at UCLA, all taught and published in the family law field, as well as in other fields.²⁷² The result of the comparison carried out above shows a direct line of role modeling and mentoring that runs from Barbara Armstrong at Berkeley to me, her junior faculty colleague, and through me both to Barbara Brudno who taught the subject at UCLA beginning in 1968, and to Carol Bruch who joined Brigitte Bodenheimer at Davis in 1973. While none of the pre-1980 Hastings women faculty taught Family Law, Gail Boreman Bird was mentored in the related field of California Marital Property by her male professor and co-author, Harold E. Verrall, who came to Hastings in 1970 from UCLA, where Susan Westerberg Prager had taken his course in Marital Property.²⁷³ The many women graduates and junior faculty women at all four schools who have gone into teaching Family Law and Marital Property since these seven women began their work in the field suggests that their introduction to the subject as students was a positive one, and that their own presence in the field reflects their preferences rather than a coerced assignment to a less prestigious subject.

C. Retention

1. Tenuring

Of the fifty-three women hired by the UC schools between 1980 and

²⁷¹ *Id.* at 911-12 & tbl. 5. The other area in which Fossum found women to be overrepresented in 1975-76 was Legal Research and Writing, which she explains as “an extension of women’s first place on law school faculties as librarians.” *Id.* at 912.

²⁷² See *supra* note 28.

²⁷³ E-mail from Professor Susan Westerburg Prager, *supra* note 169 (referring to e-mail of July 5, 2002).

2000, eleven were hired with tenure.²⁷⁴ Table 11 shows the outcome for the forty-two tenure-track women and the time to tenure for each school.

Table 11. TENURING: 1980 - 2000

	HASTINGS	BERKELEY	UCLA	DAVIS
HIRED	14	12	18	9
• With Tenure	3	3	4	1
• Tenure Track	11	9	14	8
TENURED	9	5	8	5
Average Time (yrs)	5.7	5.8	5.4	5
• Longest	7	8	6	6
• Shortest	4	2	4	4
NOT TENURED*	2	4	6	3
* includes all who did not receive tenure, including all who left before seeking tenure, and all who were not yet evaluated for tenure by Fall 2000.				

Tenure problems began to emerge during this period at Berkeley. The two irregular cases mentioned above,²⁷⁵ as well as the difficulty in advancement experienced by several white men,²⁷⁶ may have had a negative, but temporary, impact on the school's ability to attract and retain other women. Carol Rose, a Chicago graduate who began her academic career at Stanford in 1978 and was recruited to the Berkeley faculty in 1980, was in residence while three of these men's cases were unfolding.²⁷⁷ Another of her white male contemporaries had joined the Berkeley faculty as an Acting Professor in 1977 and was awarded tenure seven years later, in 1984. Observing these events, she took the opportunity to visit at Northwestern in 1982, and accepted that school's offer of a full Professorship in 1983 rather than go through the tenure process at Berkeley. She presently holds a Chaired Professorship at Yale. Prior to the final resolutions in the cases of Shultz and Swift, however, five entry-level faculty, including four persons of color, three men and one woman, came to Berkeley as Acting Professors in 1988.²⁷⁸

These contested tenure cases may have affected campus review of subsequent promotion cases put forward by the law school. Two

²⁷⁴ See *supra* note 28.

²⁷⁵ See *supra* note 176.

²⁷⁶ See *supra* text accompanying note 177.

²⁷⁷ See *supra* note 28.

²⁷⁸ *Id.*

candidates, a man and a woman, hired in the early 1980s, received positive recommendations from the law school faculty only to experience difficulty at the campus level. Both ultimately received tenure in 1991 through the Chancellor's intervention in the review process. Two women of color, hired in the 1980s, obtained tenure with little difficulty, but a man of color hired during the same period and a third woman of color hired in the early 1990s left Berkeley without receiving tenure.²⁷⁹ Both currently hold faculty appointments at other schools. Since the mid-1990s, none of the junior faculty at Berkeley have experienced tenure problems. Thus, only four women appointed after 1980, one at each school, left their UC law faculty positions either without seeking tenure or without receiving tenure.²⁸⁰ Three of these women hold faculty appointments at other schools.

2. Raiding

The number of women on the UC law faculty did not escape the attention of appointments committees at other schools. Between 1980 and 2000, some of the tenured UC women faculty were the objects of raiding by other schools — a few by their alma maters. Thus, Berkeley lost Reva Siegel to Yale in 1994, and UCLA lost Lucie White to Harvard in 1996. As we have seen,²⁸¹ four women hired before 1980 left UC for other schools during this period: Barbara Brudno left UCLA for Brooklyn in 1982, while Georgetown successfully attracted Emma Coleman Jordan from Davis in 1987. Jean Love went from Davis to Iowa in 1991. Carrie Menkel-Meadow went to Georgetown from UCLA in 1996, while Kimberle Crenshaw added a half-time appointment at Columbia to her UCLA post in 1997.²⁸²

The raiding was not all in one direction. Berkeley joined with another campus unit, the Berkeley School of Information Management Systems, to recruit Pamela Samuelson from Pittsburgh in 1996. UCLA successfully recruited Grace Ganz Blumberg from Buffalo in 1981, Susan Fletcher French from Davis in 1989, and Mari Matsuda from Hawaii in 1992. Davis recruited Ellen Rausen Jordan from the University of Georgia to become Dean and Professor of Law in 1992.²⁸³

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ See *supra* text accompanying note 178.

²⁸² See *supra* note 28.

²⁸³ *Id.*

D. Flourishing

Many of the women hired at entry-level positions between 1980 and 2000, like the earlier group, have superb credentials. Thus, thirty-four of them graduated from one of Neumann's twelve producer schools;²⁸⁴ seven hold Ph.D. or S.J.D. degrees; one was Editor-in-Chief of her school's Law Review; four have been U.S. Supreme Court clerks; and twelve have had over three years of private practice.²⁸⁵ Except for those hired laterally, these women have not yet reached the peak of their academic careers. Thus, after her retirement from Buffalo, Professor Virginia Leary held the Alfred and Hanna Fromm Chair in International and Comparative Law at Hastings.²⁸⁶ None of the others hold named Chairs at the UC schools, although two former Berkeley faculty members currently hold named Chairs at Yale: Carol Rose holds the Gordon Bradford Tweedy Professorship of Law and Organization, while Reva Siegel holds the Nicholas deB. Katzenbach Professorship.²⁸⁷ As we have seen,²⁸⁸ two of them, Professors Grace Ganz Blumberg and Susan Fletcher French of UCLA, are among the five female ALI Reporters whose successful completion of their projects is celebrated by having their photographs hung in Philadelphia. In addition, Professor Blumberg and her co-reporters were honored by being designated American Law Institute R. Ammi Cutter Reporters as of 2000.²⁸⁹

It is striking that all four of the UC law schools have had women Deans, showing that there is no glass ceiling on law school Deanships at UC.²⁹⁰ Between 1992 and 1998, women filled only 7 or 8 percent of the Deanships at ABA approved law schools,²⁹¹ while for the 2000-01 academic year, the twenty-three women Deans in office comprised less than 13 percent of the 183 Deans at these schools.²⁹² The concentration of four women law Deans at UC was a significant event, both for the women themselves and for their schools. As Dean Frank T. Read, who has held Deanships at five different law schools, including Hastings, has

²⁸⁴ See *supra* note 102 (describing my use of Neumann's twelve "producer" schools).

²⁸⁵ See *supra* note 28.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ See *supra* note 183 and accompanying text.

²⁸⁹ See AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION vii (2002) (Chief Reporter Ira Mark Ellman and Co-Reporter Katharine T. Bartlett).

²⁹⁰ See *supra* note 28.

²⁹¹ See Neumann, *supra* note 9, at 323-24 & tbl. 8.

²⁹² *Id.* at 323.

observed,²⁹³

The modern American law deanship is one of the most challenging, exciting, and influential academic jobs available. The job of most law deans is much more akin to that of presidents of small colleges than to the deans of other disciplines. Far more than is the case with other academic colleges, the law dean has both external and internal constituencies with whom she must deal.

Each of these UC Deans was the first, and to date the only, woman Dean of her respective school. The first to be named, Dean Susan Westerburg Prager at UCLA, took office in 1982 and became only the tenth woman to be named Dean of a law school that was approved by the ABA.²⁹⁴ She is the only UC graduate among the four women Deans.²⁹⁵ The second, Ellen Rausen Jordan, was recruited to Davis from the University of Georgia in 1991 and assumed the Deanship on January 1, 1992.²⁹⁶ I was the third to become Dean at Berkeley in 1992, while the fourth, Mary Kay Kane, took office at Hastings in 1993.²⁹⁷ Two of these women, Prager and Jordan, had served as Associate Deans at their schools prior to becoming Dean, and Jordan also had held office as Acting Associate Vice President for Academic Affairs at Georgia from 1986 to 1988. A third, Kane, had served as Academic Dean at Hastings.²⁹⁸ I am the only one who lacked prior administrative experience, but I had extensive committee experience in the Berkeley Academic Senate, as well as leadership positions in national legal education organizations.

At no point did all of these four women Deans serve together. The terms of the three campus-based law school Deans, Prager, Jordan and myself, overlapped for about one month during the summer of 1992 after my appointment became effective on July 1, 1992, and before Jordan's illness forced the appointment of an Acting Dean at Davis in Fall, 1992. Following Dean Mary Kay Kane's appointment at Hastings on December 1, 1993, she and the remaining two women served together as Deans of three of the UC law schools until Dean Prager's retirement in 1999. As of June 30, 2000, when I stepped down, Dean Kane became the sole

²⁹³ Frank T. Read, *The Unique Role of the Law School Dean in American Legal Education*, 51 J. LEGAL EDUC. 389, 394 (2001).

²⁹⁴ See Herma Hill Kay, *Women Law School Deans: A Different Breed, or Just One of the Boys?* 14 YALE J.L. & FEMINISM (forthcoming 2002).

²⁹⁵ See *supra* note 28.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

remaining UC woman law Dean.²⁹⁹

It is also striking that all four of these Deans had faculty women serving as Associate Deans at some point during their tenure,³⁰⁰ and one, Dean Prager, appointed a woman as a non-professorial Associate Dean.³⁰¹ Less surprising is the presence of non-faculty female Assistant Deans, an administrative position commonly held by women in law schools.³⁰² When they support women in the upper levels of the administration, however, the overall impression conveyed to students, staff, and alumni seems quite different than when only men hold the top positions. Of course, as illustrated by this story from Professor Alison Grey Anderson about UCLA, the perception of female power may not be welcomed by everyone:³⁰³

Several years ago at UCLA a young male law student had a complaint about a class (I don't remember the nature of the complaint, but I don't think it was gender-related). He spoke first with Assistant Dean of Students Barbara Koshela, was unsatisfied, and went next to see Associate Dean Carole Goldberg-Ambrose and ultimately Dean Susan Prager. Apparently his problem was not resolved to his satisfaction, and after seeing Dean Prager, he emerged from her office, looked around and exclaimed plaintively, "Isn't there a man around here I can talk to?"

I am the only one of these four who reported to a woman in the campus administration, Vice-Chancellor and Provost Carol Christ, during part of my tenure as Dean. Neither Berkeley, UCLA, nor Davis has had a woman Chancellor during the twentieth century. Dean Mary Kay Kane is the chief executive officer at Hastings, and was named Chancellor there in 2001. She reports only to the Hastings Board of

²⁹⁹ *Id.*

³⁰⁰ See Neumann, *supra* note 9, at 324 & tbl. 8 (showing that between 1992 and 1999, women professorial associate Deans ranged between 22 and 28 percent of such positions nationally). The UC women Associate Deans are: *Hastings*: Eileen Scallen, Associate Academic Dean, 1996-98, Mary Crossley, Associate Academic Dean, 1998-00; *Berkeley*: Eleanor Swift, Associate Dean, 1998-00; *UCLA*: Carole Goldberg-Ambrose, Associate Dean, 1984-89 and 1991-92; and *Davis*: Martha West, Associate Dean, 1988-92. *Id.*

³⁰¹ *Id.* (showing that Associate Deans without professorial titles ranged between 46 percent and 53 percent during same period). The non-professorial Associate Dean at UCLA is Barbara Varat, who had served as Assistant Dean since 1980 and became Associate Dean in 1995, a position she continues to hold.

³⁰² *Id.* at 325 (noting that non-professorial women "almost continuously" hold 70 percent of Assistant Deanships, and observing that "[l]ike elementary school teaching, the job has become gender-stereotyped as female . . .").

³⁰³ See Anderson, *supra* note 171.

Directors.

While no formal mechanism exists at UC that routinely brings Deans from different campuses together, the few women Deans at ABA/AALS law schools have met together informally during national meetings of the ABA or the AALS since the 1970s. The UC law Deans consulted with each other throughout the 1990s on a variety of common issues facing their schools, including Governor Pete Wilson's bid to "privatize" one of the law schools in 1993, the creation of a professional degree fee that augmented the budgets of the law schools as well as those of other professional schools within the UC system, the affirmative action crisis sparked by the Regents' resolutions in 1995, the enactment of Proposition 209 in 1996, and, toward the end of the century, a successful effort to raise the system-wide law school salary scale to higher and more competitive levels.

SUMMARY AND CONCLUSION

Table 12 displays an overview of the recruitment and retention of faculty women at the UC schools during the twentieth century.

Table 12. RECRUITMENT AND RETENTION OF FACULTY WOMEN: 1900 – 2000

	HASTINGS	BERKELEY	UCLA	DAVIS
HIRED	20	17	24	15
• With Tenure	3	3	4	2
• Tenure Track	17	14	20	13
TENURED	12	11	13	9
NOT TENURED*	5	3	7	4
NOT RETAINED POST-TENURE	0	2	4	3
*includes all who did not receive tenure, including all who left before seeking tenure, and all who were not yet evaluated for tenure by Fall 2000.				

On the hiring side, Table 12 shows that the four UC law schools are roughly consistent, taking account of faculty size,³⁰⁴ with UCLA having

³⁰⁴ The AALS data show that in academic year 2000-01 Hastings had 40 faculty with 12 women, Berkeley had 56 faculty with 10 women, UCLA had 60 faculty with 17 women, and Davis had 27 faculty with 7 women. *See supra* note 28. The UC Office of the President reports that, as of June 2000, Berkeley had 54 faculty with 9 women, UCLA had 56 faculty with 14 women, and Davis had 27 faculty with 8 women. The discrepancies in these

hired the most women faculty and Davis having hired the least. All four schools hired many more women at the tenure-track level than at the tenure level. Professor Martha West has advocated this hiring strategy as a way of diversifying the faculty, since more women and minority candidates are available at the non-tenured ranks than at senior faculty levels.³⁰⁵ The UC schools, like other schools, may be applying this strategy disproportionately to women rather than to men. National statistics show that men are more likely than women to be hired at the associate or full professor level.³⁰⁶ In order to counteract this tendency, West has advocated that hires at the tenured level "should be authorized or approved only if the prospective faculty member is a woman, or a man of color."³⁰⁷

The tenuring picture shown in Table 12 is a bit misleading, since the nineteen women shown there as not tenured include seven women, one each from Hastings and Berkeley, three from UCLA, and two from Davis, who were appointed just before century's end and who had not been evaluated for tenure by December 31, 2000. Thus, of the seventy-six women hired at UC during the twentieth century, only twelve (15.8%) left without tenure (and a few of those left before a formal tenure evaluation was either undertaken or completed).

The length of time it took for women to attain tenure at these schools is shown in Table 2 (for the period of 1900 to 1979) and Table 11 (for the period of 1980 to 2000). Except for Berkeley, where the average length of time to tenure during the first period was distorted by the two irregular cases discussed earlier,³⁰⁸ all of the UC schools lengthened the average time to tenure during the second period. Berkeley's average time to

numbers may be due to the AALS reporting format, which does not count faculty with administrative positions (such as Deans) and faculty not in residence in a given academic year, but does count faculty visiting from other AALS schools. *Id.*

³⁰⁵ See Martha S. West, *Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67, 157-61 (1994).

³⁰⁶ See Neumann, *supra* note 9, at 340-41 tbl. 22 (reporting that during period from academic year 1992-93 to 1998-99, female percentage of entry-level assistant professors was 48%, and of associate professors was 39%); Merritt & Reskin, *Sex, Race, and Credentials*, *supra* note 27, at 252-53 tbl. 6 (showing that "[m]ore than forty percent of both white men (43.7%) and men of color (40.4%) garnered initial tenure-track appointments at one of these higher ranks [i.e., associate, full or chaired professor] [while [o]nly about thirty percent of white women (30.5%) or women of color (30.1%) entered the tenure track at those levels").

³⁰⁷ See West, *supra* note 305, at 157. West's article was published in 1994, before the adoption of Proposition 209, which became effective on August 28, 1997. See Kay, *supra* note 218, at 71 (stating the judicial history of Proposition 209 and noting it became effective in 1997). Professor West's recommendation, therefore, may no longer be a legally permissible option for the UC schools.

³⁰⁸ See *supra* text accompanying note 176.

tenure, while shorter in the second period than in the first, remained the longest of the four UC schools. It is unclear why this increase in the average time to tenure occurred. The longer time may reflect greater uncertainty about women's tenure cases within the law schools, the adoption of more formal and uniform tenure standards at one school,³⁰⁹ or it may be a byproduct of a greater degree of supervision exercised at some of the three campus-based law schools by central campus reviewing bodies over all law school academic personnel cases.³¹⁰

Finally, Table 12 shows the small number of women who were not retained post-tenure, having been recruited successfully by other schools. The size of this number is a testimonial to the retention efforts exerted by the UC schools in the face of determined raiding efforts.

A standard measure of success in a faculty member's academic career, as in other professions, is salary. National figures continue to show that academic men in general earn more than women, particularly at the tenured level.³¹¹ In the UC system, salary is tied to rank and step. In theory, faculty members who hold the same rank and step on the system-wide salary scales applicable to the three campus-based law schools (Berkeley, Davis, and UCLA) are being paid the same dollar amount. Several salary scales exist within UC. The most common one is the Professor scale, applicable to the colleges. The law schools have a special salary scale, as do the medical schools and several other professional schools. Faculty members who have advanced beyond the top step of the applicable scale (now Step IX for the Law School Salary Scale) are considered "above-scale." Theoretically, their salaries are unlimited. The California State Auditor concluded in 2001 that while "newly hired female assistant, associate, and full professors at the

³⁰⁹ E-mail from Martha S. West, Professor of Law, U.C. Davis School of Law, to the author (July 19, 2002, 16:44:47 PST) (on file with author). According to Professor West, the Davis Law Faculty adopted formal tenure standards in 1978 that required candidates to submit two major articles. *Id.* Professor West noted that, with normal progress, a candidate would have completed her publication requirement by the end of her fourth year, but since the tenuring process itself takes a year, tenure would not be awarded until the end of the fifth year. *Id.*

³¹⁰ Since the UC campuses have a measure of discretion within the uniform academic personnel system in their practices for reviewing departmental tenure cases, this explanation could well vary among campuses. My own experience in serving on the Berkeley Budget Committee between 1979 and 1983, and in chairing it for the last year, taught me that Berkeley has traditionally been less willing to delegate authority to the Deans in academic personnel matters than UCLA has been. The practice at Davis appears to be closer to that of Berkeley than of UCLA. Hastings is not subject to these UC Academic Senate rules.

³¹¹ See West, *supra* note 305, at 92.

University of California generally earn less on average than male professors do," its examination of selected departments, not including law, provided "no basis to conclude that UC's practices result in female professors being paid less than male professors simply because of their gender."³¹²

Salary inequities may appear when some entry-level faculty with comparable qualifications and credentials are hired at a lower rank and step than others, such as Assistant Professor rather than Associate Professor, or for campus-based law faculty, at Acting Professor Step I rather than Acting Professor Step II or III. Inequities may also appear when some faculty members are not advanced as rapidly through the steps as others. In the last two decades of the twentieth century, questions were raised about campus-wide salary inequities affecting women at Berkeley and Davis. Faculty self-governance is pervasive within UC, and is particularly important in academic personnel decisions. Therefore, an attack on the fairness of the salary system by definition can be perceived as an attack on the predominantly white male faculty, who have participated as members of the campus review committees in the advancement and promotion decisions of individual faculty members. Professor Martha West has shown how politically potent that perception was at Davis, when faculty women, with the support of the campus administration, sought to undertake a salary equity study at the Davis campus.³¹³ It took the Davis women over one year, from spring of 1994 to spring of 1995, to get faculty approval to conduct the study,³¹⁴ and another year before the final results became available in fall of 1996.³¹⁵

At Berkeley, the Academic Senate Budget Committee, which is the equivalent of the Committee on Academic Personnel at Davis and UCLA, undertook a salary equity study on its own initiative while I was a member of that committee from 1980 to 1982. The study examined 223 personnel cases for evidence of potential salary inequities, and recommended 40 of these cases for further review at the departmental

³¹² See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, *supra* note 214, at 63.

³¹³ See West, *supra* note 219, at 269 (noting that some faculty members objected that "the equity analysis 'calls the integrity of the academic personnel process into question' . . .").

³¹⁴ *Id.* at 263-302 (noting that the vote, on a petition to set aside an earlier resolution to conduct the study, was taken by mail ballot of the entire faculty, and the women won by 385 "no" votes to 336 "yes" votes).

³¹⁵ *Id.* at 306 (noting that the outcome was to give thirty-eight of the seventy women whose files were reviewed by the Davis Faculty Senate Committee on Academic Personnel a one-step increase, approximately \$3,500, on the faculty salary scale, an increase of more than \$35,000 over the next ten years).

college, school, or provostial level for possible compensatory action.³¹⁶ Several academic senate-administrative salary equity studies have been completed since that time at Berkeley without the controversy that surfaced at Davis.

The State Auditor recommended in 2001 that:³¹⁷

To help ensure that salary disparities between female and male professors do not go unnoticed or unjustified, UC should periodically perform summary-level salary reviews at a system-wide and campus level to identify patterns indicating whether female professors are typically receiving lower or higher salaries than male professors receive when other salary predictors are the same. When it identifies apparent salary disparities, UC should identify the reasons why the disparities exist and, if necessary, take appropriate action to correct any inequities.

In theory, "above-scale" salaries are reserved for the most distinguished UC professors, and external evaluations are required for advancement to this category, just as they are for promotion to tenure. As might be expected, the law faculty who have attained above-scale salaries are predominantly men. The earliest figures available from the Office of the President of the University of California for the three campus-based law schools disclose that from Academic Year 1986-87 to Academic Year 2000-01 there have been a total of fifty-four law school faculty members advanced to above scale salaries. They include thirty at Berkeley (including two women), seventeen at UCLA (one woman), and seven at Davis (one woman).³¹⁸ The advancement of the first and only woman from UCLA into this category was a sufficiently auspicious occasion that her colleague, Carole Goldberg, gave a party for faculty

³¹⁶ See COMM. ON BUDGET AND INTERDEPARTMENTAL RELATIONS, REPORT TO THE BERKELEY DIVISION OF THE ACADEMIC SENATE 2 (1981-82) (on file with author) (adding that "[a]fter further review, awards were made in 18 cases, review revealed no inequity in 14 cases, and 8 cases are still pending.").

³¹⁷ See CALIFORNIA STATE AUDITOR/BUREAU OF STATE AUDITS, *supra* note 214, at 70-72 (noting that Irvine and San Francisco campuses used "summary-level" salary reviews, and describing the model used at Irvine as one that was based on a salary evaluation model created by the American Association of University Professors. This model uses "degree indicator, age, degree year, and date of hire as predictors of salary. . .").

³¹⁸ See *id.*; Office of the President, University of California, Above-Scale Law Faculty, (Academic Years 1986-87 through 2000-01). E-mail from James Litrownik, Coordinator, Data Management and Analysis, University of California Office of the President, Academic Advancement, to the author (July 3, 2002 16:25:25 PST) (on file with author). It is unclear when the above-scale category began, but Mr. Litrownik indicated in his email that "many of those listed were undoubtedly above-scale prior to 1986." *Id.*

women in honor of Professor Grace Blumberg to celebrate her achievement.³¹⁹ On the other hand, the practice at Davis is to have the faculty vote on whether their colleagues should receive merit increases and advancements to above scale salary status, with review by an Ad Hoc campus committee and the Committee on Academic Personnel. In the case of Professor Carol Bruch, this procedure yielded her an initial increase to Step IX. She was denied advancement to above-scale status because of doubts about the quality of her scholarship and classroom teaching.³²⁰ Professor Bruch appealed the decision, noting that her student teaching evaluations were lower in her gender-related courses, Marital Property and Family Law, and higher in her gender-neutral course, the Conflict of Laws. She also presented a file of research material on classroom evaluations of women faculty in gender-related courses. Because Professor Bruch was successful in her appeal, she was granted the above-scale advancement.³²¹ At Berkeley, while faculty members who hold Chaired Professorships are consulted before Chairs are bestowed upon others, the Dean proposes faculty for merit increases and advancements to above scale salary status without a formal faculty vote.

What might the next century hold for UC's women law faculty? During the summer of 2001, the national law student applicant pool became 51 percent women for the first time in U.S. history.³²² The legal profession may be on the verge of "tipping" its gender composition from male to female. Given the normal time lag, this trend will not assert itself in the actual composition of enrolled law student bodies for some time, particularly at Neumann's twelve "producer" schools.³²³ Most of the "producer" schools remained — with the notable exception of Berkeley³²⁴ — either majority male³²⁵ or roughly equal as of fall of 2000.³²⁶

³¹⁹ E-mail from Professor Grace Ganz Blumberg, *supra* note 195.

³²⁰ Letter from Professor Carol Bruch to Dr. Barry M. Klein, Vice Provost-Academic Personnel (Sept. 20, 2000) (copy provided by Professor Bruch to author).

³²¹ E-mail from Carol S. Bruch, Professor of Law, U.C. Davis School of Law, to the author (Aug. 29, 2002, 17:01:57 PST) (on file with author).

³²² See Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, Mar. 26, 2001, at A1 (noting that as of March 9, 2001, "more women than men had applied for admission to law schools this fall" and speculating that "[w]omen are expected to be the majority of students entering law school this fall . . .").

³²³ See *supra* note 102 (describing my use of Neumann's twelve producer schools).

³²⁴ See OFFICIAL A.B.A. GUIDE TO APPROVED LAW SCHOOLS (2001) (noting that Berkeley's Fall 2000 student body was 58.1% women).

³²⁵ *Id.* In fall of 2000, the gender composition of the student body in eight of the twelve producer schools ranged from a high of 62.8% male at the University of Chicago to a low of 51.3% at Yale.

As at Berkeley, the student body of all of the other UC law schools was over 50 percent female.³²⁷ Still, a new day is dawning. The story told here of the entry of women law professors into the UC schools shows a small band of determined outsiders who braved rejection, isolation, and hostility to establish an initial foothold in legal education. Not until well into the 1980s did they become sufficiently established to gain a sense of belonging, and even then the women of color among them had to overcome greater obstacles to thrive. The story also shows a viable mentoring system among these women teachers and many of their women students, which has laid the groundwork for further growth. It may not be too much to hope that the progress of women faculty into and through the four UC law schools during the twentieth century may have prepared the way for other women to follow them with less difficulty in the twenty-first century.

³²⁶ *Id.* Women constituted 50.5% of the student body at NYU, 50.2% at Duke, and an even 50% at Georgetown in fall of 2000.

³²⁷ *Id.* UCLA was 54.4% women, Hastings was 51.5%, and Davis was 50.7%.

APPENDIX

The material in this Lecture is drawn from my on-going study of the women who became law professors at U.S. law schools that were accredited by the ABA and members of the AALS between 1900 and 2000 (ABA/AALS schools). I have divided the study into two periods: the first covers the sixty years from 1900 to 1959, and focuses on the fourteen women who held tenure or tenure-track appointments to the regular faculty during that time.³²⁸ I call them "early women law professors." The second period covers the forty years from 1960 to 2000, when the number of academic women in law expanded exponentially. As part of the study, I have identified the names of the first woman appointed as a tenure or tenure-track member of the regular faculty at each ABA/AALS law school. At the conclusion of my study, I expect to have a list containing the name of every woman who held such an appointment, and to be able to track her academic career. This definition excludes librarians, clinicians, adjunct teachers, and legal writing instructors,³²⁹ even though several of the women who were law librarians held professorial appointments during the period from 1900 to 1959,³³⁰ and many more do so today.³³¹

I will examine the academic careers of the fourteen early women law professors in detail. For the larger group of women who entered legal education between 1960 and 2000, I will provide a less individualized, and more statistical overview. I plan to include more detailed treatment of several subgroups of these faculty members. While I have not yet settled on all of the groups that I plan to study in greater depth, they will include at least the following: (a) women of color; (b) lesbians; (c) women law school Deans; and (d) women who left law teaching to become judges. When this project is completed, it will trace the social and intellectual history of the entry of women into academic law during

³²⁸ See Kay, *supra* note 2, at 5-8 (describing the projected study of women law professors and listing thirteen women who were the first women law professors to fit this definition); see also *supra* note 26 (noting the expanded list of fourteen women).

³²⁹ See *supra* note 27.

³³⁰ Examples include Marian Gould Gallagher, Professor of Law and Law Librarian at the University of Washington (since 1953) and Harriet Louise French, Professor of Law and Law Librarian at the University of Miami (since 1955).

³³¹ A few law librarians who hold the title "Professor of Law" in the period between 1960 and 2000 teach regular courses and have regular faculty privileges, the most important of which is the right to vote on faculty appointments and promotions. One example of a woman who fits this description is Claire M. Germain, Edward Cornell Law Librarian and Professor of Law at Cornell Law School (since 1993).

the twentieth century.