

**RACE, SEX, AND FACULTY SEARCHES, DEPARTMENT OF BIOLOGY, SDSU, 1988-2002**  
**with commentary on policies and actions of the SDSU administration**

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**SUMMARY**

Sex and race data for applicant pools for the 30 faculty searches carried out by the Department of Biology during the period 1988-2002 are tabulated and analyzed. Information is also provided on the SDSU central administration's misuse of such data and its attitude toward use of race and sex as criteria in faculty hiring. Females constitute 21% and minorities 4.5% of the current faculty of the Department of Biology; 9.1% of the Biology faculty do not specify their race in Center for Human Resources records. Over the last 12 years females have constituted, on average, 22% of the candidates in applicant pools. Over the last two decades about 41% of Ph.D.s awarded in the biological sciences to U.S. citizens and permanent residents have gone to women. Females have received 42% of the first offers from our department but have rejected offers, first or otherwise, at a higher rate (44%) than have males (28%). The true sex ratios of applicant pools are only weakly correlated with applicant pool sex ratios as reported by the Office of Diversity and Equity (ODE) ( $R^2 = 0.42$ ), in part because of the high rate of non-response to the request for race and sex information. The percentage of applicants who refuse to specify their sex and race to the ODE increased from 40% during 1995-1999 to 61% during 2000-2002.

Reliable historical information on representation of minorities in applicant pools is completely lacking as a result of this same high non-response rate. Of applicants who stated their race, 24.5% were minority candidates during 1995-2002, and of those, 64% were Asian. These include persons in the U.S. on temporary visas and persons applying from abroad. During 1983-2001, 16.3% of Ph.D.s awarded in the biological sciences to U.S. citizens and permanent residents have gone to members of minority groups, and 68% of these have gone to Asians.

The ODE prepared and distributed to SDSU College deans in 1999 an analysis that faulted about three-fourths of the academic departments on campus, including Biology, for "underrepresentation" of women and minorities on their faculties. The ODE standard for assessing "underrepresentation" was whether faculty sex and racial composition conformed to the sex and racial composition of 1998 recipients of Ph.D.s in the respective disciplines. In a separate analysis, this same standard was also used to judge the "diversity" of 1999-2000 applicant pools. These biased documents apparently were intended to create pressure for the employment of race and sex as criteria during faculty searches. In 2000, the ODE Director illegally attempted to force a Department of Mathematics search committee to hire only a person who would "advance the diversity of the dept." When SDSU President Weber was asked to affirm to the faculty that race and sex may not be used as criteria in faculty searches, he declined to do so. The ODE website has a section dedicated to presenting summaries of information on many civil rights laws especially relevant to the University. There is, however, no information given there on Proposition 209, now Article 31 of the California Constitution. The omission is not accidental.

## INTRODUCTION

For several years we have kept records concerning the racial composition and sex ratios of pools of applicants for faculty positions in the Department of Biology and periodically (1996, 2000) publicized them. This exercise was originally motivated by external threats to the integrity of the hiring process in the Department of Biology.

Despite the passage of Proposition 209 in 1996, such threats continue. Proposition 209 confirmed for California that in accord with the plain meaning of the 14th amendment of the U.S. Constitution and of the 1964 Civil Rights Act, discrimination among job applicants on the basis of sex or race is illegal. The recent Supreme Court cases concerning the use of racial preferences in student admissions at the University of Michigan will keep this issue alive. It does nothing to overrule or diminish the force of Proposition 209. But it is likely to embolden those who favor the use of preferences in faculty hiring as well as student admissions. The majority decisions in both of the University of Michigan cases signaled that universities can not only use racial preferences in student admissions but they can give a very heavy weight to race, indeed whatever weight is needed to guarantee a "critical mass" of "underrepresented" minority students in a university. There will be attempts to extend this principle to not only student admissions but also hiring and contracting of faculty and staff at ever more American public and private institutions. In California there are numerous legislators and organizations who hope to rescind Proposition 209, now Article 31 of the California Constitution.

This document presents information on faculty searches conducted by the Department of Biology between 1988 and 2002 (Table 1). It also contains information on the sex ratio and racial composition of our current faculty and of cohorts of persons receiving Ph.D. degrees in biological sciences during different periods of time in the recent past. It constitutes an updating and expansion of a report submitted to the faculty in October 2000 titled, *Racial Composition and Sex Ratio of the Faculty and of Applicant Pools, Department of Biology, SDSU, 1988-2000*.

This document also summarizes what appears to be current SDSU administration policy and practice with respect to consideration of race and sex in faculty hiring. Recent actions and statements by the administration suggest that the integrity of the hiring process is again under fire. A few years ago there was the twisting of statistical data by the ODE to create the impression that search committees in Biology, as well as in most other departments at SDSU, have failed and continue to fail to hire women and minorities in proportion to their availability in the relevant workforce. More recently the SDSU administration has put forward data suggesting that, by its own evidentiary standards, there has been discrimination against white male applicants for faculty positions.

### Two Documents

As context for viewing these issues, excerpts from two SDSU documents dealing with the issue of faculty "diversity" are given below. They represent two extremes with respect to tone and clarity. The first comes from a self-review prepared by the Department of Biology in 1997 preliminary to an external review of the Department in 1998. It is pragmatic and clear.

#### *Faculty Diversity*

*The ethnic diversity of faculty and the appropriateness of dealing with this issue within the Biology Department are ongoing topics of discussion. One group of faculty believes that aside*

*from disciplinary and pedagogic diversity, other dimensions of faculty diversity are not relevant to the success of our mission. This group seems not opposed to diversity along other dimensions but only opposed to the artificial engineering of it. Another group believes that the present racial and/or sexual diversity of the Biology faculty should be increased. .... There remains the question as to the availability of qualified minority and women candidates for faculty positions. We hire persons who are willing and able to move to SDSU and who probably are in the top 10-20 percent of the Ph.D. crop. There are no sources of information on the race and sex composition of that portion of the potential applicant pool. It may be very different from that of the Ph.D. crop taken as a whole. For example, women now earn almost 40 percent of the Ph.D.s, yet in six recent [1989-1995] Biology searches for which data are available women averaged only 16 percent (range: 10-22 percent) of the applicant pool. ....*

The second comes from the official statement that supposedly defines SDSU policy on "diversity." It is exceptionally vague, as was pointed out at the Senate meeting when it was approved (see [http://www-rohan.sdsu.edu/dept/senate/senmin/Minutes\\_Archive/1994-04-19\\_SENATE\\_Minutes.html](http://www-rohan.sdsu.edu/dept/senate/senmin/Minutes_Archive/1994-04-19_SENATE_Minutes.html)). It would seem to imply that all of the dimensions of diversity listed in it should be used as factors in student admissions and hiring of faculty and staff, although this would be illegal. It implies that preference should always be given to persons from weakly represented groups over those from better represented groups, regardless of the criteria (race, sex, religion, political party, national origin, etc.) by which those groups are defined.

#### *Statement On Diversity*

*Approved by The Senate: April 14, 1998*

*Approved by President: May 11, 1998*

*San Diego State University is a community of men and women who are diverse racially, ethnically, linguistically, culturally, in class background, national origin religious and political belief, age, physical ability, and sexual orientation. ....*

*Diversity shall be an essential consideration in all University policies and decisions.*

Despite SDSU's policy that "diversity must be an essential consideration" in hiring faculty members, the SDSU administration forbids asking applicants to supply data on the other *officially recognized* dimensions of diversity at SDSU, viz. their characteristics with respect to native language, culture, class, national origin, religion, politics, age, physical ability, and sexual orientation. This is convenient in that it allows use of a shorter form for collecting "diversity" information. It also suggests that the professed interest of the SDSU administration and some faculty members in using "diversity" criteria in hiring and student admissions is not deep. That is, they are not as willing to engage in discrimination as the SDSU Statement on Diversity suggests they are.

#### **Information Sources**

This analysis makes use of the following data sets, portions of which are included in Table 1 accompanying this report:

1. Biology Affirmative Action Archives. These include the following information for each faculty search: total number of applicants, sex ratio of that *total* applicant pool, percentage of applicants that did

not return the Affirmative Action data cards, the sex ratio and racial composition of those applicants who returned data cards and names of all persons offered positions in the department.

2. Faculty Search Records of the AAO and ODE. These are the source of much of the above information in the Biology Affirmative Action Archives. These sometimes are incomplete but at least for most searches initiated since 1995 records are available as to the sex ratio and racial composition *of those applicants returning the cards asking the applicant's sex and race*. Only starting in 1998 did the ODE begin keeping records on the total number of applicants in each search. The current ODE Director Cheryl Fisher and her staff have been very helpful in providing information on recent searches.

3. ODESA 1999. In 1999 the ODE prepared for each College a tabulation on the applicant pools and results of all searches conducted during 1999-2000. This was titled "Ph.D. Availability, Applicant Pool, Candidate Pool and Hires by Ethnicity and Gender". I will refer to this tabulation as the ODE Search Analysis, or ODESA. The tabulation contained brief annotations for each applicant pool and shortlist indicating how they compared with the composition of the ODE's "availability" pool. Examples of these annotations were "Exceeds Latino Availability", "Exceeds Female only", "Does not meet Availability for Any Group", and "Exceeds for Asians." This tabulation was provided to the deans of all SDSU Colleges.

4. ODEFA 1999. The ODE also prepared in 1999 a tabulation covering all Colleges that compared the sex ratio and racial composition of each department's faculty with the sex ratio and racial composition of the "availability" pool for that discipline. Where the percent females or the percent minorities in a given department's faculty fell below the corresponding value for the "availability" pool, a heavy **black box** was drawn around the departmental datum. This document was titled "Tenure/Track and PhD Availability based on SDSU Payroll data as of 1/24/00 and National Opinion Research Center (NORC) data as of 1998." I will refer to it as the ODE Faculty Analysis, or ODEFA. This tabulation was also provided to the deans of all SDSU Colleges.

5. COS 2001 Compilation of Race Data. This presents data compiled by P. Langlais on November 27, 2001 on racial composition of the faculty of each department in the SDSU College of Sciences, of Ph.D. awardees in different scientific fields, 1991-1998 (NSF data from National Opinion Research Center), and of the populations of San Diego County, California, and U.S. in 2000.

6. Statements by SDSU Administration. Statements by the President, Provost, and past Director of the Office of Diversity and Equity concerning race, sex, and faculty searches have been published in a number of documents, including SDSUniverse, Shared Vision Reports, The Diversity and Equity Newsletter, and the student newspaper, The Daily Aztec.

7. NSF Science and Engineering Doctorate Awards. Every year NSF publishes a tabulation by discipline, sex, race, and citizenship status of doctorate degrees conferred the preceding year. I have provided this information in Table 1 for doctorates awarded in the biological sciences (excluding agriculture) between 1983 and 2001. In its ODESA and ODEFA, the ODE used only data for doctorates conferred in 1998. The ODE obtains these data from the National Opinion Research Center and usually refers to them as the NORC availability data.

## THE BIOLOGY FILE

### Poor Response To Requests for Race and Sex Data

In faculty hiring, the "diversity" component of the process begins with each applicant being sent a data card inquiring about their sex and race or ethnicity. They are asked to fill in this card and return it to the ODE.

In Biology searches since 1995 the non-response rate to the request for sex and ethnicity information has been high (51%) and is getting higher (Table 1, Fig. 2). For the 12 documented Biology searches carried during 1995-1999, an average of 40% of applicants declined to return the card. For the nine searches initiated since 2000, the average non-response rate was 61%. Extension of the regression line in Fig. 1 would predict that by 2012, 100% of applicants for Biology positions will be refusing to return the ODE data cards. And by 2038, 200% will refuse to do so!

Unwillingness to provide this personal information is not limited to applicants to the Department of Biology. According to the ODEFA, the 11 searches conducted by other departments in our College of Sciences during 1999-2000 had an average non-response rate of 66%.

*These high non-response rates demonstrate that the race and sex data gathered by this operation of the ODE have long been highly unreliable for any serious or honest purpose.*

It is axiomatic in sample survey work that non-responders can never be regarded as a random or representative sample of the population queried. And there is no reliable information as to the nature of the biases in these ODE data sets.

There is some indication that wiser and more experienced applicants are most likely to throw the request for information on race and sex directly into the wastebasket. The search completed in 2001 for a new Dean of the College of Sciences yielded 52 applicants. Of these, only one returned a completed data card (Fig. 2)!

Across the country increasing numbers of students applying to colleges and universities are refusing to check a 'race box' on their application forms. On October 7 this year 36% of California voters voted to forbid the state from asking people to divulge their racial background whenever it pleases. It seems that many applicants for faculty positions are equally fed up with the racialization of society promoted by government, academia, and other institutions, and rightfully distrustful of how race data are used by such entities.

### Racial Composition of Biology Applicant Pools Is Essentially Unknown

For our faculty searches since 1995, minorities have constituted an average of 24.5 % of those applicants who were willing to identify their "ethnicity" (Table 1).

With so many applicants staying silent on their race, however, the true percentage of individuals in any one minority group in applicant pools could be several-fold greater than the percentage estimated from the data card returns. Or it could also be half as great as the values reported by the ODE. We simply have no idea what the representation of different minority groups is among that 51% of applicants, on average, who since 1995 have refused to return data cards to the ODE.

During 1983-2001 minorities have constituted 16.3 % of the U.S. citizens and permanent residents receiving Ph.D. degrees in the U.S. in the biological sciences (Table 1).

Most minority applicants for positions in the Department of Biology *seem* to be Asian. These have constituted up to 44% of applicants returning ODE data cards in recent searches and received 11.1 % of Biology Ph.D.s awarded during 1983-2001 (Table 1). Many Asian applicants are recent immigrants to the U.S. with permanent resident visa status, foreign students with temporary visas, or persons applying from outside the U.S. No records are kept by the Department of Biology or the ODE of the nationality, citizenship or visa status of job applicants. A major factor in the high percentage of Asians among applicants and among recent Ph.D. awardees was the Tienanmen Square massacre in 1989. Following this, tens of thousands of Chinese graduate students and postdocs were given political asylum in the U.S. This resulted in the number of Ph.D.s awarded (all fields) to Asian-Americans and permanent resident Asians during 1993-1997 showing a several-fold increase over the number awarded to this group before or since that time (J. Mervis, Science 300:1070-1074).

The difference between representation of Asians in our department and their apparent availability in the relevant workforce likely is due to a number of factors. These may include the recentness with which they have come to constitute a large fraction of Ph.D. awardees, a tendency to be concentrated over a small number of subdisciplines (as reflected in their *apparent* representation in recent applicant pools ranging from 0% to 44%; Table 1), and the language difficulties of recent immigrants.

### **Racial Identity: Who Classifies?**

According to the SDSU Center for Human Resources (personnel office), as of March 2002 the Department of Biology tenured and tenure-track faculty was 84.6% white, 4.5% Hispanic, and 9.1% unspecified (Table 1).

A College of Sciences compilation of November 2001, however, listed the tenured and tenure-track Biology faculty as being 92% white, 2% black, 2% Asian, and 4% Hispanic. It also gave the racial breakdown for 100 % of faculty members in all other College of Sciences departments.

The discrepancy between these two inventories, taken three months apart in the middle of the academic year, reflects in part an "eyeball" assignment to racial categories of those individuals who declined to check a race box on their personnel form at the Center for Human Resources. Such "eyeball" assignments appear to have been done for the faculties of all other departments in the College of Sciences.

The assignment of individuals to racial categories they themselves did not select seems at best an undesirable activity, even for documents of restricted circulation. It is commonly done in our current race-obsessed society, and it belies the idea that the provision of information on one's racial identity is always voluntary. Individuals who "decline to state" in fact have no control over which race box they will be put in by some bureaucrat and no control over the uses to which that data will be put.

### **Unreliability of ODE Estimates of Applicant Pool Sex Ratios**

The unreliability of ODE data sets can actually be measured in the case of sex ratios of applicant pools.

With rare exceptions the sex of an applicant is easily determined once their application file is complete. The Department of Biology has determined the sex ratio of the entire applicant pool for every Biology search but four since 1988.

For 15 Biology searches we have both the true sex ratio (TSR) of the applicant pool and an estimated sex ratio (ESR) based on returns of the ODE data cards (Table 1). Figure 1 presents a regression analysis for these two variables that demonstrates the unreliability of the ESR as an estimate of TSR.

(Note: ESR values were presented in the ODESA for Biology's searches initiated in 1999. These, however, are not presented in Table 1 or Figure 2. In at least two cases, the ESR values presented in ODESA seemed in fact to be TSR values. These were perhaps supplied by the Department to ODE sometime during the search process. As indicated by internal evidence in the ODESA, they were not ESR values calculated from returned data cards.)

The regression analysis in Figure 2 shows that ESR is only a rough general predictor of TSR and can be a very unreliable estimator in any particular case. Its reliability as a predictor is best measured by the coefficient of determination ( $R^2$ ). This is the proportion of the variation in TSR that can be accounted for by variation in ESR.  $R^2$  can range from 0 to 1. The value obtained (0.42) is low. Its complement ( $1 - R^2 = 0.58$ ) is a measure of the amount of 'noise', as contrasted with 'signal', in the ESR values.

Since accurate information on the sex ratio of the applicant pool can be obtained directly from the applications themselves, the information obtained on sex ratio from the returned ODE data cards is useless and often very misleading.

### **Sex Ratio of PhD Awardees, the Faculty, and Applicant Pools**

Females constituted 18% of the Biology tenured and tenure-track faculty in March 2002 (Table 1) and 21% (= 9/42) at the time of this writing (October 2003). They have constituted an average of 22% of the applicants in the 26 recent faculty searches for which we know the sex ratio of the entire applicant pool. Both figures are almost half the percentage of females among Ph.D. awardees in biology over the last two decades.

This difference is no surprise or mystery to sociologists who analyze labor force statistics in relation to differences among men and women with respect to choices they make and preferences they have concerning many dimensions of their careers and family life. For a woman with a Ph.D. in biology and with small children, or plans to have children, there are, for example, many reasons why a job in the biotechnology industry might be more attractive than one as an assistant professor in a research university, or why a half-time job might be more attractive than a full-time one.

*The actual availability of females in the labor force from which the Department of Biology recruits its faculty is thus more accurately represented by our own records on actual numbers of females in applicant pools than it is by data on numbers of Ph.D.s awarded.*

The previous ODE Director, Susan Moss, strongly disagreed. Moreover, she regarded discrepancies such as that just described as a cause for action. When asked if "the raw data on Ph.D. production [are] a more accurate indicator of the sex ratio of the 'available' applicant pools than is the record over many searches of the sex ratios in actual applicant pools," she replied "Yes" (memo from S. Moss to S. Hurlbert, August 28, 2000).

If female representation in applicant pools regularly falls below that among Ph.D. awardees, as it does in Biology, this indicated, in her opinion, "a need to beef up outreach, advertising, and we would scrutinize the ad [and] the written criteria to see if we can pinpoint possible obstacles and change them" (memo from S. Moss to S. Hurlbert, August 28, 2000).

The naïveté reflected in such an attitude poses a real threat to the faculty and university. It was implied that in Biology our methods for advertising positions have been incompetent, inefficient, sexist, or possibly all three of these. Susan Moss apparently saw no other possible explanation for our data - for the fact that females have about half the representation on our faculty and in our applicant pools as they do among Ph.D. awardees.

### **Position Offers and Rejections: Male-Female Differentials**

The hard data suggest that SDSU's Department of Biology's treatment of the fairer sex has been quite chivalrous.

Females have constituted 22% of the typical applicant pool and received 30% of the 30 positions that Biology has filled since 1988 (Table 1).

And Biology tried to do even better than that: in 42% of the 30 searches, the first offer was made to a woman.

In filling those 30 positions, a total of 45 offers were made - 29 to males and 16 to females. Offers were rejected more often by females (44%) than by males (28%).

(The full tabulation of offers and rejections is somewhat sensitive information and so is not included in this report. A copy of it has been deposited with the department chairman, Chris Glembotski.)

### **1998 Ph.D. Awardees versus Biology Faculty in 2000**

The ODEFA and ODESA reports reflected a twisting of data to political ends. This may have been for the purpose of interjecting race and sex as criteria in subsequent faculty searches. As documented in a later section, it is evident that the SDSU central administration believes that Proposition 209's proscriptions against the use of such criteria do not apply to SDSU.

The biased nature of the ODEFA and ODESA documents derived from the fact that the "availability" pool against which both faculties and applicant pools were evaluated was the set of U.S. citizens and permanent residents receiving the Ph.D. in 1998.

Use of that standard of "availability" had predictable consequences:

1. By comparing faculties hired over the last 30+ years with 1998 Ph.D. awardees, it created the appearance of underrepresentation of minorities and women where there was none;
2. By ignoring well-known male-female differences in career and life style choices, it created the appearance of underrepresentation of women where there was none; and
3. By ignoring the political circumstances giving rise to recent increases in Ph.D.s awarded to Asians, it created the appearance of underrepresentation of "total minorities" where there was none.

The ODE moreover applied the biased standards in a biased fashion. In the ODEFA, those faculties where "whites" were "underrepresented" (e.g. Electrical Engineering, Linguistics, Special Education) or where males were "underrepresented" (e.g. Nursing, Religious Studies) went unchallenged. These cases of "underrepresentation" were considered acceptable.



The ODE also preferred fudged data to no data. For one 1999-2000 Psychology search where no applicants returned the data cards, the ODEFA was annotated, "Unable to determine w/o data card[s]; estimate all candidate[s] are White."

The evidence is clear that the ODEFA and ODESA were not designed as honest analyses. Rather they seem to have been contrived to intentionally and grossly exaggerate the under-representation (if any existed at all) of women and minorities in SDSU faculties and applicant pools.

Not surprisingly the Department of Biology was twice 'black boxed' - because we failed to have a faculty consisting of at least 22% minorities and 45% women, their respective representations among 1998 Ph.D. awardees.

Biology was in good company, however. Of all those academic departments at SDSU for which "availability" pool data could be defined ( $n = 48$ ), the ODEFA placed '**black boxes**' around 71% for "under-representation" of minorities and around 83% for "under-representation" of women.

Was this evidence of galloping racism and sexism? Or perhaps only of careless political correctness run amok?

### **Where Such Business Can Lead**

The power of biased and incompetent analyses in this area to go undetected and unchallenged and to negatively affect university policies should not be underestimated. A recent imbroglio in the University of California demonstrates this well.

Women accounted for 27% of new hires in the UC system in 1998 - down 10 percentage points from 1994, when sex and race preferences had not yet been outlawed by voters. In 1998 women received 48% of the doctorates awarded in the United States. A UC Davis law professor, Martha West, claimed this discrepancy was evidence of gross discrimination against women in UC faculty searches. Other voices joined in the hue and cry.

The state legislature then asked the California State Auditor's office to undertake an extensive review of hiring practices at all UC campuses. It did so, publishing its 111-page report in 2001 under the title, *University of California: Some Campuses and Academic Departments Need to Take Additional Steps to Resolve Gender Disparities Among Professors*. Prime evidence of the review's incompetence was that it discounted knowing the percentage of applicants for UC positions who were female. That information, the most accurate indicator (averaged over many searches) of the true availability of females in the relevant labor pool, is gathered for every search on every UC campus. Department chairmen are even asked to note the sex and race of every applicant who fails to volunteers the information! Table 5 in the Auditor's report gave plenty of evidence that representation of women among recent PhD recipients generally is lower than their representation in actual applicant pools. But in the interests of "proving" sex discrimination the writers of the Auditor's report, like SDSU's ODE Director Moss, chose to base their main conclusions on the theoretical availabilities calculated from recent PhD awardees.

The Auditor's report, in sum, provided no evidence whatsoever of any "disparities" resulting from discrimination against female applicants. Nevertheless, the political heat and shouting of ideologues was sufficient to bring about the usual caving-in of the UC administration to political correctness. UC President Atkinson developed "a plan to address the problem, including asking each campus to establish a new goal for the number of female faculty members and coming up with a plan to achieve that goal"

("UC faulted for hiring fewer female faculty," San Diego Union-Tribune, February 1, 2000). In other words, Proposition 209 be damned, we're going back to quotas.

So, taxpayers' money was wasted, no problem was identified, bureaucratic bloat was fostered, and the solution to the non-problem diminished a tad the pride some new female faculty members in the UC system may feel in their accomplishments. Some will wonder if they would have made it without the disguised quota system - and also wonder whether others think the same. Male applicants for UC faculty positions will have a different set of concerns.

The relevance of this episode for our department, SDSU, and the CSU system should be clear.

## **POLICIES and ACTIONS OF THE SDSU CENTRAL ADMINISTRATION**

The Department of Biology functions under higher levels of administration and is obliged or at least under pressure to accede to the instructions of those higher levels regardless of whether they are legal or ethical. On matters of race, sex and hiring, this pressure often comes via private communications and not through open statements or discussions of policy. To foster greater awareness of SDSU's policies on these matters, information has been gathered from a variety of sources and is summarized below.

In several cases the policies are identified on the basis of actions by or statements from the ODE. That office reports directly to SDSU President Weber, however, and his approval may be assumed for these actions and statements by the ODE.

### **SDSU is exempt from Proposition 209**

This appears to be the position of the SDSU administration, and it is important faculty be aware of this. Documents from the year 2000 provide solid evidence, and no public statements by the administration since then contradict this. The evidence speaks for itself, and brief quotes from the most relevant documents are given below. The incident generating these documents was an attempt by former ODE Director Susan Moss to bias a faculty search process.

In the fall of 1999 the Department of Mathematics advertised a position opening in the area of information theory. A short list of top applicants was approved by Moss, but she added this warning to the search committee: *"My recommendation to the Provost is that if this committee's final choice does not advance the diversity of the dept., then the search should be closed and started over."* (memo from S. Moss to B. Grone, ca. 21 January 2000). In blunter terms, the search committee must decide that the position will not be offered to a white male.

This threat caused consternation not only in the Department of Mathematics but also elsewhere in the College of Sciences. When I learned of it, I contacted legal experts outside of CSU who confirmed the illegality of Moss's action. I then asked President Weber to intervene, via an open letter that also went out to all faculty members in the College of Sciences and ODE Director Moss. It stated, in part:

*Dear Steve: Members of your administration appear to be behaving unethically and illegally. They are attempting to force faculty search committees to create short lists and to select new faculty members using race and sex as criteria. They are also threatening to cancel searches if search committees refuse to go along... Your immediate intervention is needed.*

*The SDSU faculty would welcome a statement from you that such violations of the law will not be tolerated. To confirm my understanding that the policies being implemented are indeed illegal, I asked for opinion from a number of lawyers and other individuals intimately familiar with this area of law. The responses of the seven individuals who replied are given verbatim following the Math department memo....*

*You may wish to affirm to the faculty and to your administrators that if a position is defined and advertised in an open, thorough and fair manner approved by the SDSU administration, and if at least a few well qualified persons are among the applicants, then the winnowing down to a shortlist, the ranking of finalists, and the tendering of an offer should be allowed to proceed.*

*And they should be allowed to proceed without administrators imposing additional criteria (e.g. race and sex) that were not mentioned in the position description. You may want to specifically affirm to the faculty that using race or sex or religion or political party as criteria in the hiring process is illegal, as is putting pressure on other persons to do so....*

President Weber never responded to this letter or offered the clarifications requested. Through his Executive Assistant, however, this message was passed:

*... the President is interested in our policies being consistent and legal, and that we work constructively with the colleges and departments. He considers this a matter between the mathematics department, the college dean and the office of diversity and equity (memo from B. Hartung to S. Hurlbert, 15 February 2001).*

He declined to answer the main question concerning the legality of what the ODE Director was doing. The reasonable presumption was that he thought her actions were legal and that she was in fact carrying out his policies and directives.

In email messages, ODE Director Moss insisted that her position was justified by the fact that Proposition 209 was "trumped" by federal law and that, if SDSU so desired, it could use "diversity" criteria to its heart's content. An article on the matter in the SDSU student newspaper presented Moss's position very clearly: It stated in part:

*San Diego State University is exempt from adhering to California laws which state that hiring practices cannot discriminate against, or grant preference, to any individual or group -- that from Director of Diversity and Equity Susan Moss. Moss said although Proposition 209 allows federally funded institutions to ignore state law in hiring practices, SDSU does stay within state law when hiring.... "We don't want stupid minorities or stupid women," she said. "We don't want stupid white guys either. We want people who can do the job. What I recommend is if they don't end up with some diversity in these searches, that I'd just close it down and make them do it over." (S. Gutierrez, "SDSU discriminates in hiring, claims professor", The Daily Aztec, 15 March 2000).*

The SDSU central administration has yet to acknowledge that Proposition 209's strictures against using race or sex preferences in hiring apply fully at SDSU and are not "trumped" by federal law in any way. Closing down a fairly conducted faculty search because the racial composition or sex ratio of an applicant pool does not meet some administrator's personal "diversity" criterion is illegal. It is a violation of the civil rights of every applicant in the pool.

A final piece of evidence that the SDSU central administration believes it is exempt from Proposition 209

is that no information on the proposition is given on the ODE website, though there are summaries of more than a dozen other state and federal civil rights laws. This omission is not accidental. It was called to the ODE's attention more than three years ago. The director's reply was:

*... we had it [Proposition 209] there at the beginning, but we have replaced it with newer legislation. We do updates on newest legislation, and 209 is no longer new; we haven't the time or program memory to list all the laws pertaining to civil rights. (memo from S. Moss to S. Hurlbert, 24 August 2000).*

When most of the civil rights laws included on the ODE website are older than Proposition 209, and when the entire text of Proposition 209 is only half a page long, the excuse offered for its absence seems weak indeed.

### **SDSU discriminates against white male applicants for faculty positions**

Consistent with the above is the fact that with increasing frequency the central administration has taken to announcing that white male faculty members are being hired in smaller numbers than their availability on the job market would predict in the absence of discrimination against them. A few quotes:

*Recent tenure/tenure-track faculty hires increasingly reflect our multiethnic student body. In 2001, SDSU hired a higher proportion of women and non-white Ph.D.s than received doctoral degrees nationally [during 1992-1998].*

– SDSU Third Annual Shared Vision Report, Spring 2002

*From 1997-98 to 2001-02, 35.5 percent of tenured or tenure-track faculty hires were persons of color – more than double the percentage of applicants of color available nationwide. Over the same period, 50.7 percent of SDSU's tenured or tenure-track faculty hires were women, compared with 43 percent of applicants nationwide who were women .... SDSU hired 70 new tenure-track faculty in 2002, including a higher percentage of women and persons of color than represented in the national pool of Ph.D.s.*

– SDSU Fourth Annual Shared Vision Report, Spring 2003

*According to the most recent national data available, persons of color have constituted approximately 17 percent of the national Ph.D. pool, while in the last three years under Provost Marlin's leadership, 34 percent of SDSU's tenure track hires have been persons of color. In particular, whereas the most recent national data indicate that Hispanics constituted only 3.7 percent of the national Ph.D. pool, 15 percent of SDSU's new faculty hires over the last three years have been Hispanic.*

– SDSU President Weber, Open Letter to the University, March 4, 2002

*In recent years approximately half of our new tenured and tenure-track faculty have been women and almost one-third have been faculty of color, greatly exceeding national averages based on availability.*

– SDSU Provost Nancy Marlin, Convocation Address, Fall 2002

Those not totally inured to the jargon of political correctness will recognize that terms such as "persons of color" and "faculty of color" constitute bigoted language. Their only function is to serve as battle cries that set in opposition to "colorless" persons, all other persons in the world regardless of the fact that these other groups have no more in common with each other biologically, historically, culturally, etc. than they do with "colorless" people. Somewhat humorously, the phrase "of color" is also intended to embrace

"colorless" Hispanics, i.e. those Hispanics who check the box for "white."

For academic administrators, of course, the phrase "of color" has a second function. That is to obscure how few "under-represented" minority faculty members there are, by lumping their numbers with those of the often "over-represented" Asian faculty members. The university is not responsible for the small numbers of "under-represented" minorities in faculty applicant pools. It earns no respect and fools no one by becoming defensive and using inaccurate and bigoted language in the hopes of pacifying campus radicals. That approach has backfired more than once at SDSU.

## RECOMMENDATIONS

The Department of Biology might take several positive steps to deal with the general state of affairs outlined.

- 1) The department should respond quickly to any clear evidence of sex or race discrimination by search committees or individual faculty members. In my 33 years in this department I have not witnessed such, nor does the composition of our faculty give any evidence of such discrimination. But it pays to be on guard.
- 2) The department should respond quickly and aggressively to any statements or innuendo from the SDSU administration to the effect that we have been or are being unfairly discriminatory in our faculty searches.
- 3) The department should keep good records of its faculty searches independently of the records kept by the ODE. That is, it should take over responsibility for updating Table 1. Good data will be the best defense against bad data and politically motivated attack from outside the department.
- 4) Search committees and administrators should guarantee that the search process is an open and transparent one, with only the secrecy necessary to provide the appropriate degree of confidentiality to the individual applicants. All criteria and procedures used and all instructions from and actions by administrators concerning the search process should be a matter of public record.
- 5) The Department should encourage the ODE and central administration to acknowledge that the NORC data on Ph.D.s awarded give very biased estimates of the relative availability of men and women and of different racial groups in workforce from which we hire. As our 1997 departmental document stated:

*We hire persons who are willing and able to move to SDSU and who probably are in the top 10-20 percent of the Ph.D. crop. There are no sources of information on the race and sex composition of that portion of the potential applicant pool.*

This has not changed. The NORC data cannot be used to evaluate applicant pools or departmental faculties or to set policy. They tend to be abused politically and lead to the same sort of errors made by the California State Auditor's office and the University of California.

- 6) Given the extreme budget situation in the CSU system, the department should request that SDSU and CSU administrators investigate how many dollars are being spent on gathering and processing large quantities of low quality, useless data on race and sex of applicants by the ODE and its counterparts throughout the state. They should consider whether those monies would be better allocated to other purposes.

## **ACKNOWLEDGMENTS**

Thanks to Cheryl Fisher, Ellen Nash and Janice Taylor of SDSU's Center for Human Resources for help in updating our departmental records, to Joan Dainer for preparing the table, figures, and statistical analyses in this report, and to all those colleagues who have supported - or will support - the effort to keep these processes, and debates about them, honest and open.

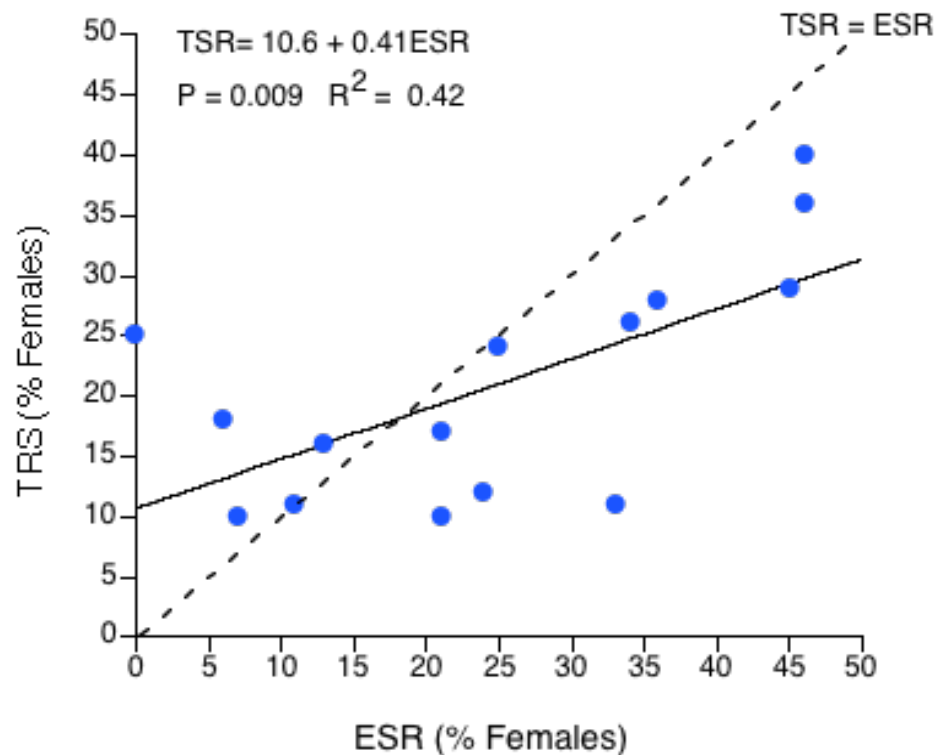


Figure 1. Regression analysis demonstrating that true applicant pool sex ratios (TSR) are poorly estimated by sex ratios estimated from returned ODE data cards (ESR).

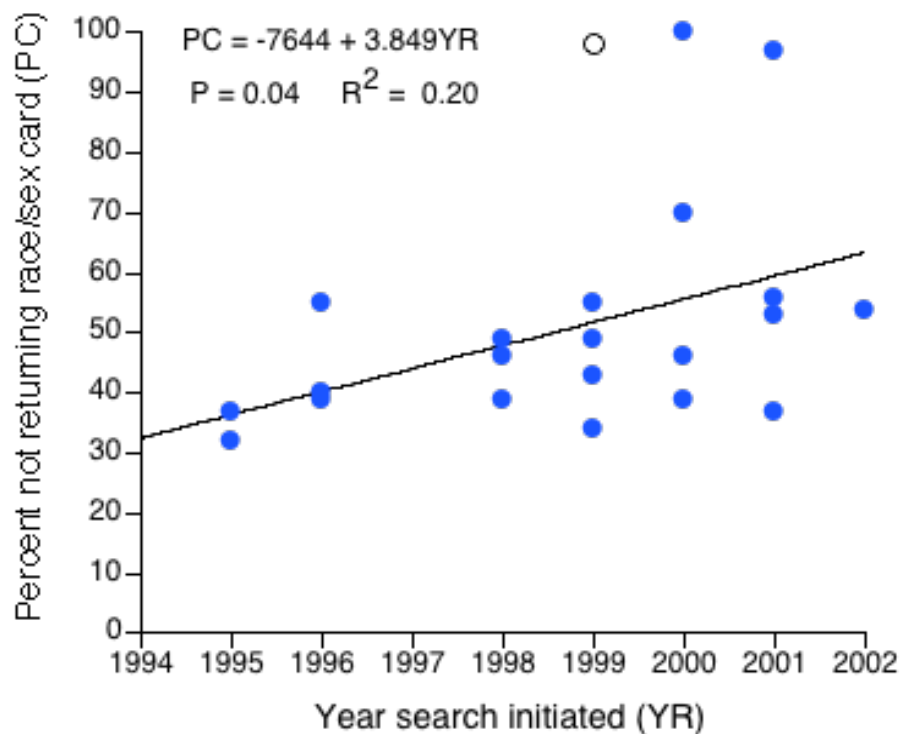


Figure 2. Temporal trend in the percentage of applicants for Biology faculty positions who refuse to specify their sex and race or ethnic group. Open circle is for applicants ( $n = 52$ ) for the position of Dean of the College of Sciences.

Table 1. Composition of Applicant Pools: Faculty Searches in Biology, 1988-2002

| Table 1. Composition of Applicant Pools: Faculty Searches in Biology, 1988-2002 |              |                     |                         |          |                        |  |  |                |                |                | 16             |                  |
|---|--------------|---------------------|-------------------------|----------|------------------------|--|--|----------------|----------------|----------------|----------------|------------------|
| Position<br>(VPA#)  | Sex<br>Hired | Search<br>Initiated | Total No.<br>Applicants | % Female |                        | % Not<br>Returning<br>Data Card <sup>a</sup> | Racial Composition (%) of Those Returning<br>Data Card or (bottom) Receiving Ph.D. |                |                |                |                |                  |
|   |              |                     |                         | Actual   | Reported by<br>AAO/ODE |  | Wh   | BI             | His            | As             | AI             | Oth <sup>a</sup> |
| Algal ecologist (59)  | F            | 1988                | 80                      | -        | -                      | -  | -  | -              | -              | -              | -              | -                |
| Mammalogist (69)  | F            | 1989                | 6                       | -        | -                      | -  | -  | -              | -              | -              | -              | -                |
| Immunologist (64)   | F            | 1989                | 34                      | 12       | -                      | -  | -  | -              | -              | -              | -              | -                |
| Popn. Geneticist (61)   | M            | 1989                | 31                      | -        | -                      | -  | -  | -              | -              | -              | -              | -                |
| Vert. Morphologist (63)   | F            | 1989                | 27                      | 19       | -                      | -  | -  | -              | -              | -              | -              | -                |
| Comp. Physiologist (14)   | F            | 1989                | 113                     | 20       | -                      | -  | -  | -              | -              | -              | -              | -                |
| Card. Physiologist (12)   | M            | 1990                | 42                      | -        | -                      | -  | -  | -              | -              | -              | -              | -                |
| Microbiologist (5)  | F            | 1993                | 120                     | 22       | -                      | -  | -  | -              | -              | -              | -              | -                |
| Herpetologist (3)   | M            | 1995                | 67                      | 10       | 21                     | 37   | 83.3   | 2.4            | 2.4            | 9.5            | 2.4            | 2.4              |
| Quant.Ecologist (2)   | M            | 1995                | 69                      | 10       | 7                      | 32   | 85.4   | 0.0            | 2.1            | 12.5           | 0.0            | 0.0              |
| Ornithologist (26)  | M            | 1996                | 56                      | 12       | 24                     | 55   | 72.0   | 4.0            | 4.0            | 16.0           | 0.0            | 4.0              |
| Life Scientist (28)   | M            | 1996                | 101                     | 24       | 25                     | 40   | 61.7   | 0.0            | 5.0            | 30.0           | 1.7            | 1.7              |
| Conserv.Ecologist (27)  | M            | 1996                | 66                      | 26       | 34                     | 39   | 85.4   | 2.4            | 0.0            | 2.4            | 7.3            | 0.0              |
| Popn. Geneticist (65)   | M            | 1998                | 71                      | 28       | 36                     | 49   | 78.0   | 2.0            | 10.0           | 4.0            | 2.0            | 4.0              |
| Invert. Ecologist (66)  | M            | 1998                | 56                      | 16       | 13                     | 46   | 74.2   | 0.0            | 6.4            | 12.9           | 0.0            | 3.2              |
| Entomologist (63)   | M            | 1998                | 28                      | 18       | 6                      | 39   | 76.5   | 0.0            | 0.0            | 17.6           | 0.0            | 0.0              |
| Fish Ecologist (64) <sup>c</sup>  | M            | 1998                | 59                      | 16       | -                      | -  | -  | -              | -              | -              | -              | -                |
| Plant Ecologist (27)  | F            | 1999                | 65                      | 35       | - <sup>b</sup>         | 55   | 86.2   | 4.6            | 0.0            | 9.2            | 0.0            | 0.0              |
| Develop. Biologist (29)   | M            | 1999                | 87                      | 38       | - <sup>b</sup>         | 49   | 71.2   | 0.0            | 4.4            | 22.2           | 2.2            | 0.0              |
| Microbial Ecologist (28)  | M            | 1999                | 21                      | 20       | - <sup>b</sup>         | 43   | 71.4   | 4.8            | 4.8            | 19.0           | 0.0            | 0.0              |
| Comp. Physiologist (30)   | M            | 1999                | 73                      | 19       | - <sup>b</sup>         | 34   | 79.2   | 0.0            | 8.3            | 12.5           | 0.0            | 0.0              |
| Mar. An. Ecologist (39)   | M            | 2000                | 41                      | 29       | 45                     | 46   | 95.4   | 0.0            | 5.6            | 0.0            | 0.0            | 0.0              |
| Algal Ecologist (40)  | M            | 2000                | 10                      | 11       | 33                     | 70   | 65.7   | 0.0            | 33.3           | 0.0            | 0.0            | 0.0              |
| Computl Biologist (41)  | M            | 2000                | 15                      | 23       | -                      | 100  | -  | -              | -              | -              | -              | -                |
| Evol. Dev. Biologist (42)   | M            | 2000                | 23                      | 17       | 21                     | 39   | 79.0   | 0.0            | 7.0            | 14.0           | 0.0            | 0.0              |
| Conserv. Ecologist (3)  | F            | 2001                | 27                      | 38       | - <sup>d</sup>         | 97   | - <sup>d</sup>   | - <sup>d</sup> | - <sup>d</sup> | - <sup>d</sup> | - <sup>d</sup> | - <sup>d</sup>   |
| Path. Microbiologist (72)   | M            | 2001                | 19                      | 11       | 11                     | 53   | 44.0   | 0.0            | 11.0           | 44.0           | 0.0            | 0.0              |
| Card. Physiologist (71)   | M            | 2001                | 16                      | 25       | 0                      | 56 <sup>g</sup>                              | 57.1   | 0.0            | 14.3           | 28.6           | 0.0            | 0.0              |
| Plant Ev. Biologist (2)   | F            | 2001                | 43                      | 40       | 46                     | 37 <sup>h</sup>                              | 70.4   | 0.0            | 11.1           | 7.4            | 0.0            | 11.1             |
| Microbial Genomics (82)   | M            | 2002                | 28                      | 36       | 46                     | 54   | 61.5   | 0.0            | 0.0            | 38.5           | 0.0            | 0.0              |
| Mean Values   |              |                     |                         | 22       |                        | 51   | 73.6   | 0              | 1.1            | 6.8            | 0.8            | 1.4              |
| PhD's awarded in Biological Sciences<br>(US Citizens & Permanent Residents)     |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 1983-1993 (N = 37196)   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 1994-1998 (N = 21264)   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 1999-2001 (N = 12605)   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| SDSU Biology Faculty, 2002 (N = 44 full-time) <sup>e</sup>                      |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 37  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 44  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 46  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 18  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 87.9  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 74.0  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 76.7  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 86.4  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 1.6   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 2.4   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 2.9   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 0.0   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 6.1   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 2.2   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 3.3   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 4.1   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 4.5   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 0.0   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 0.3   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 18.4  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 13.5  |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 0.0   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 0.3   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 2.4   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |
| 9.1   |              |                     |                         |          |                        |  |  |                |                |                |                |                  |

a. These figures include those individuals who returned the form but checked "Decline to state" rather than identify their ethnicity.

b. Values reported by ODE appear to be in error (see text) and original data cards have been discarded.

c. Data not available.

d. Not calculated because only 1 data card returned.

e. Data provided by E. Nash, Center for Human Resources, March 1, 2002

f. Includes "Other", "Decline to state", and "No information available"

g. Two returned cards did not specify sex.

h. One returned card did not specify sex.