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THE NURTURING OF MINORITY LAW  
TEACHERS IN THE ACADEMIC STATE

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Five years ago, the National Law Journal published an article entitled, "Hard Times for Minority Profs" (December 10, 1984, at 1, col.1). The lead sentences of the article stated that "one-third of the 170 accredited law schools in the United States have no minorities on their full-time faculties. And another one-third of the schools have only one . . . ." If these figures have not dramatically changed today, my remarks on nurturing minority faculty will not be very helpful to two-thirds of American law schools.

I have never taught in a majority law school. However, I have spent all except seven years of my career in the private and public sectors as a legal pioneer of some sort. By pioneer, I mean that I have been the first black on the job or near the first. This experience has aided me during now almost two years as chair of the Minority Group Section of the American Association of Law Teachers.

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\*/ Before Association of American Law Schools' Workshop on Minorities in Legal Education, held in Washington, D.C., September 7-9, 1989. Professor Smith is chair of the Minority Group Section of AALS.

The observations that I made in my pre-teaching career and the observations that I have made of the dynamics of legal education as an active member of the Minority Group section of AALS have taught me that the barriers faced by minority lawyers in the private sector and in the academic state of legal education are quite similar.

The views that I express here today were inspired by the many discussions that I have had with minority law teachers about the plight that they face on law faculties, many established nearly a century ago, which have only recently found a qualified minority to teach at their law schools. It is not arguable that these law schools have no experience with the cultural diversity of the "minority voice" in the governance of the law school, its personality or any aspect of its institutional mission.

How does a law school manage its worksite so as to accommodate a "diverse voice" in what some say is a "diverse community?" The idea itself is a tautology. Living out such a tautology may be hazardous for a minority law professor.

The entry of a minority on a law faculty with no history of race diversity may be a traumatic experience for the institution, the faculty and the "new voice." The environment of a worksite--which a law school surely is--will affect the productivity of its workers, and the intellectual curiosity of its workers as well.

Tenured faculty and other faculty members who hold key positions on faculties, have often experienced nothing but segregated academic environments. These faculty members may not recognize the need to consider whether any changes are required to accommodate "a new voice." Senior faculty and the institution itself may take the position that "we are who we are and if you want to be apart of us, you must adjust to who we are." If such a view is prevalent and if the minority teacher buys in to such a psychological mind set or pre-conditioned for academic survival and advancement, he or she will always be judged on the basis of "who they are," rather than on the basis of their own personhood and cultural identity. The submission to such a demand will foreclose any institutional initiatives that recognize diversity of personhood, and make the need to consider any barriers faced by the minority law teacher unnecessary. In the eyes of the institution the minority law teacher is therefore invisible.

How does a law faculty, a law dean, nurture someone who is invisible? Hopefully, this Workshop will assist the academic community to visualize the "new voices" on their faculties and, in a broader sense, the compelling need to have a larger pool of "new voices" in the academic state.

How does a law faculty nurture its minority faculty? Assuming there is no problem of minority non-visibility, the nurturing process should be the same as it is for any other professor on the faculty. However, what if the nurturing process is desperate as to minority professors? What if the nurturing process is thwarted by neglect? What if the expectation level--call it the mind set--of senior professors are low as relates to the minority professor? What if the dean is aloof to the nurturing process retreats or after the recruitment and hiring process is complete or after the AALS/ABA accreditation visit ends? The answer to many of these question is obvious. The careers of minority professors could be in jeopardy.

It is my view that the nurturing of junior faculty members is the managerial responsibility of the entire tenured faculty. Included in that general responsibility is the assurance that minority faculty members are treated equally with respect to all aspects of faculty life, and presented with the same opportunities to develop.

Historically, what "is or ought be" regarding the doctrine of equal opportunity has too often proven to have no application to minority group members. Therefore, I strongly urge deans and concerned faculty to consider formulating a plan to assure equality

of opportunity for minority faculty. What should such a plan include? The answer to this question may depend on the environment and personality of each law school. The following plans are proposed for consideration.

1. PLAN ONE. The dean and two key faculty members should meet with new minority faculty within the first thirty days of their first semester to explain the qualitative and quantitative standards for success at the law. The dean should designate one of the senior faculty as an advisor to the faculty member. The senior faculty member should schedule, at a minimum, one monthly discussion session with the teacher during the first year for purposes of general discussion, give-and-take on matters of general concern, interest and information. The senior faculty member should arrange a time for class visits and offer criticism and suggestions for improvement. Such classroom visitations should be independent of other faculty-established classroom visitations. However, faculty evaluators should seek the views of the senior faculty advisor in any report or findings it may ultimately make to the appointments and promotions committee.

The purpose of Plan A is to start a minority teacher out with a sense that the dean and senior faculty recognize his or her presence and care about their progress.

2. PLAN TWO. Since publishing a qualitative law review article or other equivalent writing is often sine qua non to retention, promotion and tenure, and since publishing brings esteem to both the law school and to its collective faculty, an early support system may assist the minority faculty member to give more attention to the science of writing and publishing.

Before delving more deeply into this subject, I think that it is very important to address the issue of minority faculty overload. If the object of this workshop is to send a message to law schools on the nurturing of minority faculty members, I hope that this message informs law deans to assign minimal committee assignments to these teachers during their first two years. The pressure on minority faculty during the first two years should be in two areas: (1) teaching and (2) writing, rather than a preoccupation with committee governance. As a general proposition, new teachers should not be assigned to more than two faculty committees, and no new faculty member should chair any committee that will consume a significant amount of time away from his or her research and classroom preparation. Further, new minority professors should not be initially appointed to university committees that showboat the university's diversity at the expense of the real prize - the retention, promotion and tenure of the minority faculty member.

Now back to the practicalities of the science of publication and writing. While there is no easy answer to the issue of publication, I think that the deanal office should suggest or initiate a match between a senior member and the junior minority member towards a joint writing project, law review article or presentation of common interest. Such a project would accomplish several desirable objectives. First, a senior faculty member and the junior faculty member would have an opportunity to have more than casual faculty contact. Secondly, such a project would create an immediate environment for writing and publication with a more seasoned faculty member.

Alternatively, I recommend that the law schools revolutionize their time off policy for faculty and assign no more than three class hours (or one course) per semester during the first two years to new faculty with an expectation that by year three (the year in which the faculty member would carry his or her first full load), that a manuscript for publication be substantially complete or complete and submitted to a law review for publication.

Before closing, I want to address the question of preferential treatment and race as I have observed it and experienced it in my career. I wish that I had experienced the preferences that my white counterparts received over the past twenty years. I am sure that I speak for many other minority lawyers and for the pioneer minority law teachers.



As quiet as its kept, preferences in most jobs, including legal education is not solely in the hiring process. The real preferences for non-minorities that greatly enhance their upward mobility is in the nurturing process. It is in the nurturing process that the competitive edge is won by non-minority lawyers. I can't count the number of times that black lawyers and law teachers have talked about social events of the firm and at the homes of key faculty to which they were not invited. I once heard about a dinner party at the firm at which I worked to which several of my counterparts were invited. There were several tennis matches and golf outings, and other events to which minority lawyers were not invited.

Social contact alone is an act of nurturing. The greater the opportunity for contact, the greater the opportunity for success. Think about it. Think about the substantive discussions that take place in a social setting, the ideas that are shared, the challenges that are advanced, the opportunity to explore diverse points of view, and the respect for one another that is generated.

Preferences for certain members of a faculty are not foreign to law schools. Preferences are not foreign to the legal education industry. So, whatever modest plan is adopted by law schools to enhance minority participation and career advancement, if an inquiry is raised about racial preference look around your senior faculty, your entire faculty and ask yourself whether the nurturing process for minority success is equal.