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RECRUITING AND RETAINING FACULTY OF COLOR IN THE LEGAL ACADEMY: A LONGSTANDING COMMITMENT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS¹

Veryl Victoria Miles²

The Mid-Atlantic People of Color Legal Scholarship Conference made a very important commitment at its 2003 Annual Meeting to give special attention to the question of the academy's efforts and success in achieving racial and ethnic diversity within the professorate of the nation's law schools. At this meeting, a session entitled "Recruiting and Retaining Faculty of Color" invited attendees to engage in an exchange about the progress and challenges that law schools are experiencing in diversifying their faculties. The intense level of engagement of attendees in the discussion made very apparent the importance of this topic, such that the Conference agreed to make this topic one that should be regularly scheduled for its future annual meetings.³

This topic is also one that the Association of American Law Schools (Association)⁴ embraced many years ago as critical to its purpose to improve the legal profession through legal education.⁵ The Association expects that

¹ This article is adapted from a presentation given at the Mid-Atlantic People of Color Legal Scholarship Conference, 2003 Annual Meeting, held at the Washington and Lee University School of Law, Lexington, Virginia, January 30 to February 1, 2003.

² The author is a Professor of Law at The Catholic University of America School of Law in Washington, D.C. She served as the Deputy Director of the Association of American Law Schools from August 2001 through August 2003. Professor Miles would like to thank Mr. Carl Monk and the entire staff of the Association for their support during her tenure as the Deputy Director.

³ The program was structured as a roundtable discussion between panelists Professors Peter Alces, Blake Morant, the author and the conference attendees. Topics presented for discussion specifically focused on ways to increase the minority faculty applicant pool; common challenges faced by law schools in the retention, promotion and tenure of minority faculty; self-help actions faculty of color can employ when encountering a lack of institutional support; the value of lateral movement within the academy; the impact of the present debate on affirmative action in student admissions on the recruitment of faculty of color; and the impact of budget cutbacks on the recruitment of faculty of color. Due to the keen interest in this subject at the conference, the planning committee for the 2004 Annual Meeting of the Mid-Atlantic People of Color Legal Scholarship Conference decided to continue this important discussion at its meeting next year, which will be held at the University of Baltimore School of Law, Baltimore, Maryland.

⁴ The Association of American Law Schools is a learned society of 165 member law schools. Its overall purpose is to improve the legal profession through legal education. The Association engages in a variety of activities to achieve this objective by regulating its members through periodic reviews to determine compliance with its membership standards; providing professional development programs for law faculty and administrators; serving as a clearinghouse in collecting and disseminating information that would be useful to law schools; and serving as a representative of legal education before public forums and the bar.

⁵ AALS, *Bylaw 1-2*, in 2002 HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS (2002).

by providing an educational experience and environment at its member schools that is inclusive and representative of our multicultural society, there will be increased and more meaningful representation and access for all members of society before our many different legal forums and systems.⁶ In fact, the enhancement of diversity within the law school professorate is a charge of the Association's Standing Committee on Recruitment and Retention of Minority Law Teachers. Accordingly, in preparing my remarks for this program as the Deputy Director of the Association, it seemed quite appropriate to review the history and work of this longstanding committee and summarize its findings and recommendations on how the law school community can best increase and enhance the numbers and careers of minority faculty within the academy.

In 1987, the Association appointed a special committee that was directed "to consider and make recommendations on how the Association can assist schools in the recruitment and retention of minority faculty."⁷ In defining the scope of this charge, the committee focused on racial and ethnic

⁶ AALS, *Statement on Diversity, Equal Opportunity and Affirmative Action*, in 2002 HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS (2002).

⁷ This special committee was created during the tenure of Association President Victor Rosenblum. The commitment to diversifying the nation's law faculties was also a very important part of the message from Susan Westerberg Prager, the Association President in 1986. In her message to the Association, she reported that based on statistics from the ABA Task Force on Minorities in the Legal Profession, "one-third of ABA approved schools still had no minority faculty and that a third of the schools had only one minority faculty member," which was based on data collected in 1983-84. She went on to say that the academy needed not only to find ways to increase the number of minority law professors by encouraging minorities to think of law teaching as a career option, such as encouraging students to write and to work with individual faculty members, encouraging and assisting them to seek judicial clerkships, and educating them about the nature of this career choice and the role one can play as a law professor, but it also needed to pay greater attention to improving the quality of their experiences. AALS NEWSL. (AALS, Washington, D.C.), Nov. 1986.

In 1989, Association President Herma Hill Kay continued this commitment in her message to the Association. She discussed articles and studies written in the late 1980s about the minority law professor's life and recommendations from the Special Committee on Recruitment and Retention of Minority Law Teachers. Dean Kay quoted the Special Committee's report noting that "it would be a mistake for the AALS to ignore the actual circumstances under which many minorities must work," as well as the findings from a survey conducted by Professors Derrick Bell and Richard Delgado that reported that there was "a decline in civility and tolerance of difference at the nation's law schools." According to the Bell-Delgado survey, these environments were described as "racist or subtly racist" and the working conditions were so stressful that more than one-tenth of the minorities responding to their survey were thinking seriously of leaving the academy. Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 352 (1989); AALS NEWSL. (AALS, Washington D.C.), Apr. 1989.

Association Presidents Emma Coleman Jordan and Gregory Williams both included the subject of diversity within the academy as a part of their presidential agendas. In 1992, President Jordan appointed a Special Commission on Meeting the Challenges of Diversity in an Academic Democracy, the Commission published a series of papers and bibliographies entitled "Perspectives on Diversity," which can be found at <http://www.aals.org/table.html>. During his term as president in 1999, Gregory Williams formed an AALS Racial Diversity Task Force to identify "short term and long term diversity goals of the Association."

minorities, including but not limited to "Blacks, Hispanics (including Mexican-Americans, Puerto Ricans, Cuban-Americans and others of Spanish origins), Asians and Pacific Islanders, and Native-Americans."⁸ The status of this committee was subsequently elevated to a standing committee within the Association's organizational structure and it has been very active in its work toward this charge since its inception.

Through its work the Committee identified three major actions that should become regular activities of the Association if it is to be effective in assisting law schools in the diversification of their faculties:

- To collect and maintain empirical information to assist law schools to better understand the extent of diversity throughout the academy and to assess its efforts in increasing this diversity over time;
- To identify constructive recommendations on how recruitment efforts can be enhanced and how schools can do a better job of retaining and promoting minority faculty; and
- To sustain a continuing dialogue about issues related to the recruitment and retention of minority faculty through programs and conferences sponsored by the Association.⁹

The Report of the Committee extensively describes the kinds of empirical data that would help schools understand the status of minority faculty and accurately assess the success in this effort, and its recommendations on how schools can improve recruitment, retention, and promotion of minority faculty are also extensive.¹⁰ Each year the Association collects and analyzes data on the faculty applicant pool participating in the Association's Faculty Recruitment Conference and Faculty Appointments Register.¹¹ This data includes information regarding

⁸ AALS, *Report of the Special Committee on Recruitment and Retention of Minority Law Teachers*, 1991 PROCEEDINGS OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 326 (1991).

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Association's Faculty Recruitment Conference and Faculty Appointments Register are both annual services that the Association provides to its members. The Conference has been held every Fall since 1974 and brings law school recruitment teams and individuals seeking faculty positions together to help member schools facilitate their recruitment and hiring efforts. An important part of this service is the Faculty Appointments Register, which allows individuals interested in seeking a faculty appointment to file biographical forms with the Register. The Register is published and distributed to member schools four or five times a year. For more information about this service visit the AALS website at <http://www.aals.org/frs/index.html>.

applicants based on gender and minority status and provides an analysis over a six-year period for comparisons. In addition, data is also collected from the Association's *Directory of Law Teachers* and it presents information to help schools track the retention and promotion success of existing minority law faculty within the academy.¹²

The Committee has regularly sponsored programs at the Association's Annual Meeting to sustain the dialogue within the academy about important issues regarding the recruitment, retention, promotion, and tenure of minority law faculty. Program topics in past years have specifically addressed challenges in recruiting faculty of color with a focus on innovative programs designed to recruit faculty of color through collaboration with minority bar associations; graduate/fellowship programs that are designed to prepare minorities for an academic career, with an emphasis on developing teaching skills and scholarship; minority recruitment workshops and conferences; and other ways to increase the pool of minority faculty applicants, such as mentoring minority students and outreach to minority practitioners.¹³ Other program topics have focused on the importance of diversity within the academy, how to achieve faculty diversity and to nurture minority faculty progress within a law school, how to retain and promote minority faculty through mentoring programs, how to provide constructive assessment of student and peer evaluations in retention and promotion decisions, and how to create a supportive environment for minority faculty.¹⁴

These programs have been very important in sustaining an open discussion of these issues at the Association's Annual Meetings. Similarly, the published reports of the Committee have provided a very informative and revealing look at the working environments of minority law faculty and offered numerous recommendations to help law schools improve their efforts to recruit, retain, and promote minority faculty throughout the academy. One can find the reports and findings of the Standing Committee on Recruitment and Retention of Minority Law Teachers in the Association's *Annual*

¹² For the statistical data regarding law school faculty, visit the Association's website at <http://www.aals.org/statistics/index.html>.

¹³ The Standing Committee on Recruitment and Retention of Minority Law Teachers sponsored or co-sponsored the following programs focusing on recruitment issues: *Innovative Recruitment Efforts: Schools with Particular Success in Recruiting Efforts and Graduate Programs Preparing Minorities for Law Teaching*, AALS Annual Meeting, January 7, 1993; *How to Plan a Regional Program for Recruiting Minority Lawyers and Law Students into Legal Teaching*, AALS Annual Meeting, January 8, 1999; *Advancing the Legal Academy: Strategies for Recruiting People of Color as Law Professors*, AALS Annual Meeting, January 6, 2001; *Diversifying Law School Faculty: Ideas for Expanding and Evaluating the Candidate Pool*, AALS Annual Meeting, January 4, 2002.

¹⁴ AALS Annual Meeting, Promoting and Nurturing the Academic Values of Faculty Diversity, (Jan. 5, 1990); AALS Annual Meeting, The Retention, Promotion and Tenure of Law Professors of Color: Strategies for the Twenty-First Century (Jan. 6, 1997).

Proceedings and in a series of articles by the Committee that were published in several issues of the *AALS Newsletter* in 1996–1997.

The findings of the Committee covered several issues including recommendations on how schools could increase the general minority applicant pool, what law schools need to do to retain minority faculty, and how law schools can enhance opportunities for the promotion and tenure of minority law faculty. Some of the most commonly suggested recommendations on the question of increasing the pool of minority law faculty included the following:

- Enhancing the pipeline into the profession by playing an active role in creating a stream of candidates to choose from. Some of the ways that law schools can achieve this is by proactively identifying and encouraging talented minority students to consider law teaching as a career option. Individual faculty members who can provide these students with an opportunity to serve as research or teaching assistants can do this in a meaningful way. They can also advise and encourage students to pursue career opportunities that are highly valued employment credentials within the academy, such as judicial law clerkships, employment with major law firms or high profile government agencies, or to consider a post-law school degree program that prepares its students for a law-teaching career. Faculty members can actively seek and encourage talented minority practitioners to consider becoming law faculty candidates, some of whom might include alumni and members of the minority bar who have been effective presenters at continuing legal education programs and other law conferences. It was also recommended that law schools persuade talented alumni or practitioners to teach as adjuncts to test the waters for law teaching where there may be some reluctance on their part to consider giving up a satisfying practice for an academic career. The Committee noted that for many lawyers, the notion of going back into the law school environment is not a positive consideration because they may have had negative experiences in law school as students. The Committee listed "Practitioner-in-Residence" programs or exchange programs between law faculty and practitioners as other ways to bring minority

practitioners into the law school to give them an opportunity to experience the law school from a law faculty perspective.¹⁵

- Identifying additional ways of soliciting minorities to apply for teaching positions beyond posting ads in the *AALS Faculty Placement Bulletin*, *The Chronicle for Higher Education*, or bar journals.¹⁶
- Identifying feeder organizations from which the academy has drawn very talented minority faculty, such as the various minority legal defense organizations including the Mexican-American Legal Defense Fund, NAACP Defense Fund, Puerto Rican Legal Defense Fund, and the Native American Rights Fund.¹⁷
- Hiring committees should consider seeking university support for hiring "the best candidate" and not be restricted by a hiring agenda that is solely driven by actual course needs.¹⁸
- Standards of merit for hiring law faculty should not be so narrow in scope and limited to "traditional indicia of such talent" (such as law review membership, top class rank, judicial clerkships) and should be open to consider candidates that have talent and potential but who may have less traditional criteria.¹⁹

The Committee's recommendations on how law schools could be more effective in creating environments to retain minority law faculty and to increase institutional success in the promotion and tenure of minority faculty included the following:

- Law schools should avoid imposing excessive service demands on minority faculty as a way to increase racial diversity on law school and university committees where there are too few faculty of color for such representation

¹⁵ AALS, *Report of the Special Committee on Recruitment and Retention of Minority Law Teachers*, *supra* note 8; *Walking the Walk: Recruiting a Diverse Faculty*, AALS NEWSL. (AALS, Washington, D.C.), Apr. 1996.

¹⁶ AALS, *supra* note 8.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ AALS, *Walking the Walk: Recruiting a Diverse Faculty*, *supra* note 15.

to be shared. This is particularly important given the fact that excessive service demands can interfere with a faculty member's research and scholarship requirements as well as their availability to participate in other activities that are critical to advancement such as making scholarly presentations at other law schools and before scholarly organizations.²⁰

- Law schools need to appreciate the importance of junior faculty participation in intensive writers' workshops, works-in-progress programs, and other formal opportunities for young scholars to get feed back on their work and to be exposed to the larger academic community.²¹
- A supportive environment for faculty of color is important for the "quality of life" issues that minority faculty often experience at law schools where there is a very small minority presence on campus. There is often an experience of isolation and alienation; institutional pressure for a minority presence at law school, university, and community activities; expectation that they serve as resource to all minority students; and a failure on the part of the institution to accept the fact that race often plays a very dynamic role in the classroom.²² It is important to identify other external affinity groups for support, such as state or local minority bar associations or minority faculty groups within the university or the greater law school community. Of course, a critical solution to isolation is having a critical mass of minorities so that there is "real diversity."²³

²⁰ AALS, *Report of the Special Committee on Recruitment and Retention of Minority Law Teachers*, *supra* note 8; *Retaining Faculty of Color*, AALS NEWSL. (AALS, Washington, D.C.), Aug. 1996.

²¹ AALS, *Report of the Special Committee on Recruitment and Retention of Minority Law Teachers*, *supra* note 8.

²² *Id.* In its discussion of this issue the Committee cited Professor Derrick Bell's experience at Stanford in 1986 as a visiting professor. *Id.* His students at Stanford were not receptive to his introduction of race and slavery in the formation of the Constitution. *Id.* In response to the student criticism, the law school administration created an enrichment program on constitutional law. *Id.* Professor Bell learned about the reasons for the creation of this enrichment program from the school's Black Law Students Association (BLSA) students. *Id.*

²³ *Retaining Faculty of Color*, *supra* note 20.

- A very important aspect of a successful retention and promotion experience to a faculty member is for a school to provide for meaningful mentoring of its faculty. This is very critical for faculty of color and can go a long way in helping the minority faculty member deal with the issue of handling racism within the law school and feelings of isolation. It is important that the mentor be familiar with the person's teaching and scholarship, be familiar with the procedures and culture of the law school and university, and be willing to communicate honestly and commit to seeing that this person succeeds. Senior mentors should be prepared to give the lone minority faculty advice on law school and university service demands and advice on when and how to say "no" when those demands adversely affect the teaching and scholarship of the faculty member. It was also suggested that a senior faculty member should be willing to intervene on behalf of the junior faculty member when service demands become excessive. Finding mentors at other institutions who are willing to give counsel about general issues concerning promotion and tenure within the academy and who will evaluate scholarship for the junior faculty member should be encouraged as well.²⁴
- Law schools should have clearly stated and published tenure and promotion standards and provide regular performance evaluations that are candid and constructive. The Committee emphasized the importance of a school having standards that allow for fair and enlightened evaluation of diverse and innovative perspectives in scholarship and teaching. It was also noted that the promotion and tenure standards need to "be thoroughly discussed, duly adopted, and formulized, and clearly conveyed to the untenured faculty."²⁵

²⁴ *Id.*; *Faculty Retention: Developing, Communicating and Implementing Tenure Standards*, AALS NEWSL. (AALS, Washington, D.C.), Aug. 1997 (sharing observations by a Special Committee of the Association on Tenure and the Tenuring Process about the need to have specific and agreed-upon standards for tenure and highlighting these observations as very important to the goal of achieving promotion and tenure of minority faculty).

²⁵ *Retaining Faculty of Color*, *supra* note 20; *Faculty Retention: Developing, Communicating and Implementing Tenure Standards*, *supra* note 24.

- There should be formal policies for course and committee assignments as well as support for scholarship and lightened teaching loads where permitted.²⁶
- Faculty members should be given a chance to learn about serious criticisms in promotion and tenure files (such as through redacted comments of evaluators), and the tenure faculty candidate should have an opportunity to have some input in identifying potential external evaluators for tenure or promotion decisions.²⁷
- It was also recommended that schools avoid giving special privileges to minority faculty as they matriculate through the ranks to avoid preferential treatment, which can often undermine respect for the minority professor.²⁸

In sharing these findings and recommendations of the Committee on Recruitment and Retention of Minority Law Teachers with conference attendees, it was noted that most of the observations of the original Special Committee continue to be pertinent to the status of minority law faculty today, some fifteen years later. The opinions and experiences expressed by the attendees confirmed this, as did many of the subsequent reports and publications this Committee produced over the years.²⁹ This observation provoked concern among the attendees that although many individual schools can report increases in faculty diversity and a sustained commitment to diversity on their faculties, perhaps there has not been that much progress toward the goal of increasing the presence of minority faculty throughout the academy.

While the conference discussion was primarily concerned with qualitative factors regarding the challenges that schools encounter in the recruitment, retention, and promotion of minority faculty, statistical information collected by the Association reflects modest increases in the percentages and numbers of minority law faculty. Data published on the Association's website, which is collected from the Association's *Directory of Law Teachers*, indicates that over a six-year period the percentages of

²⁶ *Faculty Retention: Developing, Communicating and Implementing Tenure Standards, supra* note 24.

²⁷ *Id.*

²⁸ *Retaining Faculty of Color, supra* note 20.

²⁹ The Committee on Recruitment and Retention of Minority Law Teachers filed reports with the Association that were published in the Association's *Annual Proceedings* for 1993, 1994, 1995, 1997, 1999, 2002. Each committee addressed specific issues within its scope of responsibility on recruitment, retention, or promotion and tenure of minority faculty.

individuals who identify themselves as minorities increased from 12.9% in the 1995–96 academic year (a total of 1024 minority faculty) to 14.6% in 2001–02 (a total of 1249 minority faculty).³⁰ This data includes administrative and teaching faculty and staff in the law schools such as deans, associate and assistant deans, head librarians, full professors, associate professors, assistant professors, visiting professors, lecturers, instructors, and emeriti deans and faculty.

However, while the data regarding the percentages of minorities participating in the Association's Faculty Appointments Register (Register) indicated an increase in the percentage of minority participation in the 2001–02 academic year at 19.3% from 17.4% in the 1995–96 academic year, the actual number of minorities participating in the Register had decreased to 144 in 2001–01 from 157 in 1995–96.³¹ This decrease in minority participation in the Register gave everyone pause and reaffirmed the need for the academy to give greater attention to the need to be active and aggressive in finding ways to increase the number of minorities interested in pursuing law teaching as a career option.

At the conclusion of the discussion, the conference participants concurred that if the academy is to achieve real success in increasing the presence of minority faculty throughout the law school community, it is imperative that this discussion be a regular agenda item for every law school and the greater law school community. Critical to sustaining this discussion and bringing about positive results is the commitment of faculty of color to constantly remind their communities of this important issue and to be constantly engaged in encouraging and recruiting other minorities to come into the academy.

³⁰ For a complete report of the Association's statistical information regarding law faculty, see the Association's website at <http://www.aals.org/statistics/index.html>.

³¹ *Id.*