

The Racial Gap in the Promotion to Tenure of Law Professors:

Report of the Committee on the Recruitment and Retention of Minority Law Teachers* Committee Commentary

Introduction

Promoting racial diversity among law students, faculty, and staff is a core value of the American Association of Law Schools. The AALS Executive Committee signaled its commitment to diversity in a strongly worded "Statement on Diversity" issued in 1995:

"AALS' commitment to equality of opportunity and diversity reflects the judgment of the member schools that these are core values in legal education and in the legal profession. The objective reaches beyond simply ensuring access to all who are qualified. It seeks to increase the number of persons from underrepresented groups in law schools, in the legal profession and in the judiciary in order to enhance the perception of fairness in the legal system, to secure legal services to all sectors of society, and to provide role models for young people." [1](#)

In its Bylaw 6-4(c), AALS encourages member schools to "seek to have a faculty, staff, and student body which are diverse with respect to race, color, and sex," and enforces this provision through the accreditation/membership review process.[2](#) To proactively focus on issues of diversity, AALS created the Standing Committee on the Recruitment and Retention of Minority Law Teachers (hereafter, "the Committee). The Committee is charged with addressing and highlighting issues relating to the recruitment and retention of minority law teachers to the legal academy. In past years, this Committee has sponsored numerous workshops and panels on the recruitment of minority law teachers.

However, recognizing that initial gains in hiring might be easily defeated by losses through retention, the Committee urged AALS to turn its attention to retention. In 2004-2005, the Committee recommended the collection of data on retention, promotion and tenure of law teachers, with a particular focus at

examining whether a racial gap existed in the rate of promotion to tenure. In 2005, AALS statistician Rick White assembled this data and released his results in a [preliminary report](#) [hereinafter, the AALS [Preliminary Report](#)]. [3](#)

The AALS Preliminary Report identified serious problems in the retention of minority law teachers. Given the distressing findings of the AALS Preliminary Report, we believe it is essential for AALS to provide narrative commentary that would frame the data in the larger context and to offer some “best practices” remedies for member schools. Without such context, the statistical information may well be misunderstood in ways that can ultimately undermine the legal academy's commitment to diversity. We recommend the AALS attach this narrative commentary, the report below, as an Executive Summary [hereafter, the Executive Summary] to the AALS Preliminary Report.

The Racial Gap in Tenure Promotion

The AALS Preliminary Report tracks the promotion and retention of all faculty hired by law schools in the 1990-91 and 1996-97 academic years. Two features of the study's methodological design are notable. First, the AALS Preliminary Report is a study of an entire population, rather than a sample of a population. As will be discussed later, this has important implications for its statistical validity.[4](#) Second, the AALS Preliminary Report explores faculty experiences over time, or longitudinally, in two respects: (1) it follows the careers of two cohorts of newly hired law teachers (allowing for comparison between the experiences of those hired in 1990-91 with those hired in 1996-97);[5](#) and, (2) it tracks the experience of individual law teachers over a period of time (comparing their rank at the time they were hired with their presence in the academy and, if they are still teaching, their rank seven years later).

The AALS Preliminary Report follows the progress of all new faculty members, including those hired into lecturer/instructor positions, visiting positions, and tenure-track positions. This Executive Summary, however, discusses only those findings relevant to the promotion and retention of tenure-track faculty hired as assistant or associate professors. The AALS Preliminary Report measured four possible “outcomes” for the new law teachers in their fifth, sixth, and seventh year (and, for the 1996-97 cohort only, the eighth year). Four possible outcomes were identified: “(1) *left teaching* – no longer teaches at an AALS affiliated school, (2) *no change* – still at same rank at original law school, (3) *promoted* – now at a higher rank at original law school, (4) *transferred* – at some point during the period, transferred to another AALS affiliated law school.” [6](#)

The AALS Preliminary Report also calculates (and compares across the two cohorts) “tenure status.”[7](#) The tenure status data compares law teachers hired in the same year who have been granted tenure with those who either were not promoted or who left law teaching altogether. The study focuses on tenure status after eight (the last year tracked for the 1990-91 cohort) and nine (the last year tracked for the 1996-97 cohort) years.[8](#) These data thus allow us to report on how gender, racial and other

variables intersect with achievement or failure to be promoted.

The Committee recognizes that the AALS Preliminary Report provides a variety of useful information to the Executive Committee, but our focus is on what it says about the past record of recruitment and retention of minority law teachers (and about our future ability to recruit and retain them). Given our focus on the retention and promotion of minority law teachers, four trends are noteworthy.

First, as to hiring, both the absolute number as well as the proportion of minority law professors hired decreased in 1996-97 from 1990-91. In the first cohort (1990-1991), 125 minority professors were hired -- about 30% of new tenure-track law professors, while in the second cohort (1996-97), there were only 47 minorities, less than 25% of those hired. [9](#) In effect, minority candidates for faculty positions bore a disproportionate share of the decrease in hiring slots, since their proportion as well as their absolute numbers decreased.[10](#) Significantly, the decrease in minority hires occurred after judicial retrenchment of affirmative action,[11](#) and before the Supreme Court decision in *Grutter v. Bollinger*,[12](#) which approved diversity as a compelling governmental interest in higher education admissions.

This data (and other trends) suggest that individual law schools and the AALS must remain vigilant to ensure increasing numbers of minority law professors. There is a continuing need for affirmative, aggressive steps to increase the numbers of minority applicants, of those they interview, and make offers. In sum, the Committee concludes that existing efforts have been insufficient and recommends that law schools to redouble their efforts.

Second, as to tenure, one of the most positive trends we can glean from the AALS study is that, over time, the gender gap in tenure rates among white professors is diminishing significantly. We are pleased that the data show a marked improvement in the tenure rate of women, as compared to men, over time. There is a statistically significant gender gap in tenure rates in the 1990-91 cohort, with 72% of men receiving tenure by year seven, but 61% of women received tenure.[13](#) For the 1996-97 cohort, year seven data shows the gender gap virtually disappearing, with white men being tenured at only a two percent higher rate than white women.[14](#) Over time, then, the gender gap in rates of promotion to tenure appears to be closing. The Committee applauds the efforts of American law schools in narrowing the gender gap in tenure promotion rates. [15](#)

At the same time that the gender gap appears to be diminishing, the racial gap in tenure rates has increased to distressing proportions. Comparing minority and non-minority tenure-track professors, we see two alarming trends -- a wide racial tenure gap in each cohort and longitudinally, an increasing racial gap over time. Among those law professors hired in 1991, 74% of white law professors were awarded tenure by year seven, as compared to 60% of people of color. The racial gap is more striking for the 1996-1997 cohort, where 73% of white law professors but only 47% of minority law professors were awarded tenure by year eight. [16](#)

Another way to confirm the racial gap is by looking at those not promoted to tenure (including those who remain in teaching but were not promoted as well as those who left law teaching altogether). Among those faculty hired in 1990-91, a full 40% of minorities were not promoted, compared to 26% of whites were not promoted. Again, the racial gap is even more alarming for the 1996-97 cohort, where minorities were almost twice as likely as whites not to be promoted to tenure (53% for minorities, 27% for whites).

Significantly, some racial groups bore the burden disproportionately more than others.¹⁷ For example, while white and Asian American tenure-track professors hired in 1996-1997 were 10% less likely than white law professors hired in 1991 to get tenure, Black professors were 13% less likely to get tenure and Latino law professors were even more dramatically less likely to get tenure.¹⁸

The data suggest that Latino faculty members are particularly under-represented and leave the profession at the highest rate without obtaining tenure. In 1991, a high of 40 Latino faculty members was hired, perhaps reflecting the fact that many schools were hiring their first Latino faculty member. By 1996, however, only 11 Latinos joined the ranks of law professors, representing a 75% drop (compared, for example, to a 65% drop for Blacks and a slight increase for Asian Americans). Most disturbingly, the data shows that Latino law professors hired in 1996 had a zero percent tenure rate.¹⁹

Certainly, even if there were some degree of reporting issues in these data,²⁰ the stark difference is a wake-up call to AALS and individual law schools that special efforts are needed to recruit and to retain Latino faculty members.

Contextualizing the Racial Gap in Tenure Promotion

The Committee believes it is important for the AALS to do two things (but believes strongly they must go hand-in-hand): (1) publicize honestly and openly this data and the racial gap in tenure and promotion; and, (2) contextualize this statistical finding and present proposed "best practices" suggestions. Without contextualization (such as this present Committee report), we worry that the data will be misunderstood and used in ways contrary to AALS's core values of racial diversity in faculty recruitment and retention.²¹

We begin by emphasizing that the tenure promotion process (like other highly-subjective hiring and promotion processes, such as promotion from associate to partner within a law firm) is a fluid, rather than rigid, process.²² In other words, the process is affected by variables that differ from case to case within the same school and across schools. The subjectivity and inherent variability of the tenure process suggest both that it is difficult to explain (at an aggregate level) and yet, susceptible to the kind of unconscious, race-related dynamics that can affect any hiring and promotions process.²³

In such a complex, subjective process, we must remind ourselves the factors that have historically depressed the advancement of minority law professors.²⁴ These factors

are culled from published studies, discussions generated through the AALS Minority Section listserve,[25](#) as well as information collected from deans who identified themselves as especially concerned with the recruitment and retention of minority faculty. [26](#)

From these sources, we summarize the variety of structural explanations for why a minority candidate for tenure might face greater challenges than the typical non-minority candidate. These factors are structural, rather than individual, in that they stem from the organization of the profession and/or law school culture. Of course, while any tenure decision is both highly subjective and inherently individualistic, the decision is also affected by its structural and social context. These factors therefore play a substantial role in the promotion processes for most minority faculty, and constitute a substantial part of the larger context that has produced and shaped the racial gap in promotion rates.

We identified five contextual themes or issues. They are deeply inter-related, but it is important to examine each separately. They are the following: (1) critical mass of minority professors on a faculty (versus tokenism); (2) the extra burden of excessive “academic housekeeping” demands on minority faculty; (3) the existence and/or perception of a “double standard” for minority faculty; (4) issues related to mentoring of pre-tenure, tenure-track minority law teachers; and, (5) the existence of a racially hostile environment on some law schools.

(1) Critical Mass vs. Tokenism

By “critical mass,” we mean a notable increase in the number of previously underrepresented groups occurs on a given faculty.[27](#) Four deans noted the importance of having a critical mass of minority professors on the faculty for the retention of minority professors. As described by one dean: “There needs to be a significant presence of persons of color in the administrative ranks, in the staff positions, and in the student body. It is hard to recruit the faculty without the other elements. I realize that this sets up a chicken and egg situation. But all the strategies need to move forward simultaneously.”[28](#) While we understand this dilemma, we recommend that law schools seek to hire more than one minority at a time (that is, in a given year), to improve retention odds.

In addition, we share this dean's suggestion for the strategy of moving forward simultaneously in several fronts related to diversity and, ultimately, to the retention of minority faculty. We note also (as did two other deans) that a dean who is enthusiastic and who champions diversity issues sets an important tone from the top down that will nurture a critical mass of minority professors. [29](#)

On the flip side, the absence of a critical mass – which at some schools coincides with only the token placement of one or two minority professors on the entire faculty[30](#) - and is correlated with two additional issues that negatively impact the retention of minority faculty: the over-burdening of the token minority professors with “academic

housekeeping” chores and their isolation and alienation from their colleagues.³¹ In 1998, now-Dean Peter Alexander has succinctly noted that faculty members of color often confront issues of “aloneness, lack of support, and fear by a dug-in majority that often views minorities as necessary affirmative action hires or token appointments.”³² However, as members of this standing committee noted in August 1996, “Perhaps the most important way to retain minority professors is to create a genuinely diverse faculty.”³³

Several minority law professors have written about the perils of being the only faculty member of color in a homogeneous white male culture.³⁴ Some examples can illustrate the day-to-day isolation encountered by minority law faculty members. An African American female faculty member poignantly wrote about her experiences at a law school, which denied her tenure application. She noted that, although the faculty was polite and “nice” toward her, she faced intolerable isolation. She reported that, unlike her white peers, she was not invited “to play tennis, golf, basketball, handball or any sport” and not “regularly invited to lunch with white colleagues.”³⁵ She attributed her extreme isolation to service on inactive committees, to a teaching conflict, which necessitated her missing regularly-scheduled faculty meetings, the remote location of her faculty office, and her race and gender.³⁶ When the African American female professor attempted to remedy her isolation by inviting several senior white male colleagues to lunch, she reported that she received a less-than-warm response.³⁷

After being invited, one senior colleague asked another white colleague why the African American female professor wanted to have lunch with him. ³⁸ The second white male colleague required that African American woman and he have lunch in the faculty lounge and conditioned the lunch on an early departure.³⁹ However, when he encountered several other white faculty members, he stayed much longer than he originally intended. In brief, this lunch left the African American female professor with no opportunities to bond with this senior colleague or to ask him questions germane to her advancement. ⁴⁰

Other faculty members of color report that writing in areas of critical race theory or critical race feminism can also isolate minority faculty members. One American Indian professor reported how “[w]riting about the racist origins of Indian law was a mistake.”⁴¹ He wrote about the following colloquy with a senior white faculty member:

Senior white faculty member: “If you asked me, I'd have told you not to write an Indian law article.”⁴²

American Indian faculty member: “Why?”⁴³

Senior white faculty member: “You're Indian, right? Who's going to take you seriously? You can't be objective. People know you care about the subject too much to be neutral.”⁴⁴

A now-tenured African American woman reported that she was the first woman of color

to be tenured at her school in 2001.⁴⁵ She wrote in the area of critical race feminism, an area which her colleagues did not believe was “real scholarship,”⁴⁶ and a white male colleague told her that she “did not understand racism.”⁴⁷

(2) Academic Housekeeping as an Extra Burden

Professor Deborah Rhode, former AALS president, described women's heavier service burden on law faculties as the “academic housekeeping” they are required to do, beyond the job requirements that male professors face.⁴⁸ As Rhode notes, these service demands are even more acute for women of color.⁴⁹ The Committee believes that minority law teachers, both male and female, frequently fall prey to heavier service workloads, with minority women having an even heavier burden than either white women or men of color faculty. For example, minority faculty members often do an excessive amount of both official (e.g., faculty advisor to one or more minority student organizations) and unofficial (e.g., informal counseling, responding to racial crises at the school) student mentoring and advising.

Academic housekeeping chores are onerous for several reasons. First, faculty members receive little credit for doing them.⁵⁰ Second, the kind of service work undertaken by minority faculty members are largely invisible (e.g., both formally and informally advising minority students, representing the law school at bar and community events, serving on time-intensive, but intellectually under-valued task forces that respond to racial crises in the law school or larger university, serving as “the” minority member on law school and university-wide committees, etc.). These kinds of burdens are much heavier when there is not a critical mass of minority professors on a given faculty, leaving minority faculty members with less time and energy to devote to scholarship.⁵¹ As now-Dean Alex Johnson noted in 1997, minority scholars (and other diverse scholars) are “burdened by an additional workload that forces them to be counselor, peer, advisor, and ‘regular’ faculty members,” and that service demands deplete time and energy for scholarly productivity by minority law professors.⁵²

Four deans noted that heavier service burdens were a serious issue for tenure-track minority faculty. One dean explained that he took care to protect untenured minority faculty: “Part of the goal is to protect the limited number of faculty members of color from all of the official activities that call for a faculty member of color to be visibly present.” Another dean described the great lengths to which he goes to protect minority professors from academic housekeeping chores: “We take steps to protect their time from the many well-intentioned ‘service’ opportunities that arise (which tend to fall disproportionately upon minority faculty). They are not asked to serve on any time-intensive committees in their first three years and after that (until tenure) it is essentially up to them what internal service assignments they take on. (I communicate this to the entire faculty to try to head off service ‘requests,’ whether for internal or external opportunities, suggested by their senior colleagues.) To provide protection from student requests, I encourage (but don't require) junior faculty to say that ‘the Dean’ wants to sign off before they accept.”

In other schools, the experience may not be the same. An untenured Latino male

faculty member reported that he was asked by his dean to serve on a very demanding bar committee and to teach three required courses that were not in his subject area.⁵³ When he didn't produce as many articles as his white colleagues, his service was held against him rather than assisting him in getting tenure.⁵⁴

A now-tenured Latina faculty member stated that "at my school, minority faculty members are consistently called on to do more service work. This is especially acute for women of color, since we fill two bills. The service work includes serving on key committees where we bring the minority and female perspective (as if there's just one), as well as doing extensive work with students."⁵⁵ She noted that in her state that banned affirmative action in higher education that she has "spent considerably more time" than either her white colleagues "in dealing with students coping with stressful personal and school crises."⁵⁶ She has advocated that her law school hire a dean of minority affairs, but her pleas have "fallen on deaf ears."⁵⁷

(3) The Perceived Double Standard

Minority faculty sometimes face (and often report the perception of) a kind of heightened scrutiny that is largely unconscious and unarticulated. While it is difficult to confirm empirically the existence of such a double standard, any perception of one will do serious damage to law schools' ability to recruit and retain minority faculty. The greater service burden (in the form of academic housekeeping) is an example of a double-standard impact. Other examples abound. For example, an African American female faculty member (now tenured) reported that she received a twelve-page memorandum concerning her teaching whereas the general norm was usually a two-page memorandum.⁵⁸ She also reported that she had two-to-three faculty peer reviewers in her class at one time when the norm was one.⁵⁹

Another African American woman stated that the tenure rules were interpreted differently for her than her white male colleagues.⁶⁰ She said that she was required to have three law review articles for promotion to associate professor whereas three articles would have been the requirement for a promotion to full professor.⁶¹ Additionally, she was asked to provide a list of 10 arms-length potential reviewers.⁶² She was told that the list could not include anyone that she knew or anyone that she ever cited.⁶³ At the same time, her white colleague who was also up for promotion was told that he needed only two articles –not three – for tenure.⁶⁴ By contrast, he did not have to provide a list of ten possible reviewers and was given veto power over the associate dean's list of reviewers.⁶⁵ Such veto right was never offered to the African American women.⁶⁶

A tenured Latina faculty member also highlighted a double standard that she encountered when she was being evaluated for tenure.⁶⁷ She stated that her "file included fourteen outside letters (all but one positive)." She noted, however, that typically at her school, "tenure files usually contained six-to-eight outside letters."⁶⁸ When asked, she was told that it was because her work was very "inter-disciplinary."⁶⁹

She disbelieves this rationale and believes that it is due to greater scrutiny, and a double-standard.[70](#)

Several minority faculty members reported that they have polarized student evaluations, with a substantial portion of their students giving them high ratings and a substantial number giving low ratings. While polarized student evaluations may also exist for majority law faculty members, teaching about race in traditional courses seems to especially negatively affect a minority's faculty's student evaluations.

An untenured African American/American Indian faculty member reported that white students at her school tried to get rid of her when she started to teach a course on indigenous economic development.[71](#) They wrote letters complaining to the dean and to the chair of the promotion committee.[72](#) These letters criticized the faculty member as being incompetent. They asserted that the faculty member neither liked, nor knew, the course materials.[73](#) One of the letters was from a student who didn't take her seminar but complained that she critiqued neo-classical economics.[74](#) Another letter was from a student who already graduated.[75](#) One of the letters criticized the faculty member's syllabus in business organizations complaining that both the text and coverage was wrong,[76](#) even though the faculty member had consulted her colleagues and the corporations' list serve about her choices and covered the exact same topics as one of her senior white male colleagues.[77](#) As a consequence of these negative student comments, the promotion committee voted not to renew her contract.[78](#) It was only when a senior African American faculty member compared the raw scores of the African American/American Indian woman's evaluations with her white peers that the full faculty ultimately reversed the decision and voted to renew her contract.[79](#)

This double-bind is also a problem faced by minority scholars in their selection of research topics. As aptly described by Dean Johnson, "In essence, diverse scholars are faced with two choices when it comes to the production of scholarship. If they should seek to "fit in" with their majoritarian colleagues by producing traditional scholarship, which makes no claim to privilege or insight based on the author's status as a diverse scholar, the diverse scholar runs the significant risk of having that contribution belittled or minimized because such, for want of a better phrase, traditional, perspective scholarship is not expected of nor desired from diverse scholars. . . . Conversely, if diverse scholars produce non-traditional scholarship that draws on their unique perspectives, that work may be belittled or diminished due to its atypical nature or methodology."[80](#)

(4) Mentoring Issues

The AALS has stated that mentoring is crucial for untenured faculty members of color. In its August 1996 Newsletter, the AALS stated that "[m]any faculties do not have senior minority faculty members, and many minority professors feel that they have few opportunities to work with their non-minority colleagues."[81](#)

Several deans expressed concerns relating to mentoring. The AALS Minority Section

has for many years recognized the need for mentoring and administers a successful mentor-mentee matching program for newly minted minority law professors. At issue is both the quantitative and qualitative aspect of mentoring. Given the small number of minorities on many faculties, minority law professors report that they have trouble finding a sufficient number of senior colleagues with whom they can “connect” and who are willing to devote time to mentoring them. Some deans had found it useful to recruit additional mentors from outside their faculties to mentor pre-tenure minority candidates. At the same time, there is a qualitative dimension to mentoring: the idea that minorities are missing out on the more subtle (and often more important) professional guidance that occurs via informal mentoring and networking. Statements made by this Committee almost a decade ago remain all too true: “[m]inority professors often have fewer mentoring opportunities than their non-minority counterparts. ... The absence of mentoring opportunities for minority professors is particularly detrimental because they often have the greatest need for guidance and support; many minority faculty members confront special obstacles, ranging from racism among their students to feelings of isolation.”[82](#)

The untenured Latino male faculty member mentioned above reported that at his colleagues' urgings, he presented a work-in-progress during his first year of teaching.[83](#) No one advised him that the “work in progress” should be a finished product.[84](#) Although other members of the faculty wondered why he was presenting an unfinished product as a work in progress, no one advised him not to do it.[85](#) In fact, he was unaware of the damage of his presentation until he had an opportunity to visit at another law school. At that time one of his colleagues suggested that he take the visiting position because of the fallout caused by his faculty presentation.[86](#) This experience illustrates how mentoring may have provided him with the necessary information to better tailor his presentation accordingly.

Even senior minority law professors are sometimes deprived of mentoring opportunities. A now tenured African American female faculty member reported that her university awards a developmental chair for professors tenured for less than four years.[87](#) The goal of the chair was to provide support so that those professors can do the work necessary for promotion to full professor. The law school hand picked nominees for the university to consider for this prestigious opportunity. The African American female, having been tenured for less than four years, demanded that her name be submitted.[88](#) The university ultimately selected her for the chair.[89](#) However, the law school initially failed to offer her the stipend and course relief that prior recipients of the award received.[90](#) The law school had planned to reduce her course load by just one course during the semester even though the last person to receive the award at the law school—a white male colleague- had his course load reduced by two courses.[91](#) The law school also attempted to provide her solely with her summer research grant and not provide her with the stipend that accompanied the chair, even though the award letter stated that the stipend could be used for salary.[92](#) The African American faculty member complained and eventually received the full reduced course load and stipend. She said “tenure doesn't change anything...all of it just makes me tired.” [93](#)

As a “best practices” suggestion, law school deans are reminded to direct new minority law teachers to the resources of the AALS Minority Section, and particularly to its mentoring program. Two law school deans also mentioned that they encouraged and financially support young minority professors to attend the various regional minority law professors' conferences held around the country.[94](#)

(5) Racially Hostile Environments

Several minority law professors report how they confronted racially hostile law school environments. In a law review article, a Latina law professor wrote about how she confronted hate speech written on the stall of the women's bathroom at her law school.[95](#) The writing was a graphic mix of language directed specifically at the Latina law professor's gender and racial identity.[96](#) She described how this speech had the effect of silencing her. [97](#)

Similarly, an African American male law professor reported how he resigned as the associate dean and how several of his untenured African American faculty colleagues left their law school when white colleagues openly questioned the ability of minority faculty members in front of the white students.[98](#) An African American female professor reported that she received a “hateful flyer” and “multiple hate mail letters.”[99](#) Another African American female professor described how a picture of a gorilla was anonymously placed in her faculty mailbox.[100](#) Another African American female professor reported that, a meeting of students and faculty, a white male student referred to her as “a babe.”[101](#)

Meanwhile, an Asian American male professor reported that, when he was first hired by a law school, one of the senior white male faculty members sued the law school for “reverse discrimination.”[102](#) The white male faculty member claimed that tenuring an African American and hiring two Asian American faculty members would create a racially hostile environment for senior white faculty members.[103](#) This lawsuit was ultimately withdrawn, but nevertheless, had ironically created a “hostile environment” for the minority faculty with the result that each left this law school by 2001.[104](#)

Other faculty members report that they have suffered from repeated “micro-aggressions [105](#) causing them to question their acceptance in their academic institutions. The sole African American female faculty member reported a form of “racial hazing,” when a white male colleague came into her office to ask her if she had a map of Africa.[106](#) Another white male colleague complimented her on an Irish Fisherman's sweater that she was wearing by saying that she “must have gotten it from the black Irish.”[107](#) Even if spoken without guile, such banter had the opposite effect of isolating the minority faculty and rendering the workplace an unsupportive environment for development and scholarship.

Other Recommendations

Apart from AALS, at the level of individual law schools, the Committee suggests the

following steps.: law schools need to hire more people of color (to build future mentors for beginning teachers) and need to hire people of color in clusters (to avoid the isolationism that often comes with tokenism); the size of clusters needed to avoid tokenism will vary depending on the institution's history and current context (especially the extent to which minority faculty have alliances across racial groups). Law school deans should also be cognizant of over-burdening minority law faculty members with service commitments and be explicit in a policy of reduced committee assignments for pre-tenured minority law faculty.

At the level of individual faculty members, current faculty members should proceed to reach out to untenured faculty members. Particularly tenured minority faculty has a special obligation to take on the mentoring role. Regional people of color conferences can be especially an organizing place to begin. Most importantly, coordination as well as building alliances with other identity groups and majority groups are encouraged.

[\[Back to AALS Publications\]](#)

* Members of the committee are: Leonard M. Baynes, St. John's (Chair 2005-2006); David Dominguez, Brigham Young University; Laura E. Gomez, University of California Los Angeles; Carolyn C. Jones, Iowa (Dean); Denise C. Morgan, New York Law School; Juan F. Perea, University of Florida; Robert Odawi Porter, Syracuse; Suellyn Scarnecchia, University of New Mexico (Dean); Margaret Y.K. Woo, Northeastern [Chair 2004-2005].

[1](#) AALS Executive Committee, "Statement on Diversity, Equal Opportunity and Affirmative Action," November 1995.

[2](#) Carl C. Monk, "Foreword," *Perspectives on Diversity*, 1997, 1.

[3](#) See Richard A. White, "The Promotion, Retention, and Tenuring of Law School Faculty: Comparing Faculty Hired in 1990 and 1991 to Faculty Hired in 1996 and 1997," Dec. 14, 2004 (labeled "Draft Report")

[4](#) In brief, the report's findings are not subject to many typical criticisms of statistical analyses of samples (even random samples), since the data includes *all* professors hired in these years.

[5](#) One of the most striking differences between the two cohorts is the much smaller number of law professors hired in 1996. Overall, 438 new tenure-track professors were hired in 1990-91, while fewer than half that number, 205, were hired in 1996-97.

[6](#) White, 1 (emphasis in original) (footnotes omitted).

[7](#) See, in White (2004), Tables 3E (1990-91), 3E (1996-97), 3F (1996-97).

[8](#) Most law professors who will obtain tenure, will have obtained it by eight or nine years; put another way, law teachers who did not receive tenure by year eight of their tenure track, are unlikely to ever do so in the future.

[9](#) These rounded percentages were calculated from the raw data presented on p. 9 of RW. They were confirmed by Rick White via e-mail (correspondence between L. Gomez and R. White); see Deborah J. Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring*, 97 Colum. L. Rev. 199, (1997) (authors, using data from 1986-1991, show that approximately 16.6 percent of the faculty hires were people of color during this earlier time period).

[10](#) Women (of all races) also bore a disproportionate share of the decrease in hiring: women for 45% of tenure-track professors hired in 1990-91, but less than 40% of those hired in 1996-97.

[11](#) *Adarand v. Peña*, 515 U.S. 200(1995); *Hopwood v. Texas*, 78 F.3d 932 (1996).

[12](#) 539 U.S. 306 (2003).

[13](#) White, 6.

[14](#) This difference is probably not statistically significant, although chi square tests do not appear to have been run on this data. That data is based on comparing the seven year tenure rate for the two cohorts. Looking at the eight-year tenure rate for the 1996 cohort (note that the 1991 data goes only through the seventh year, so there is no comparable data), there is a more sizable gender gap between white women and white men. See Table 3F (1996-97) and White, 7. One explanation may be that while some (small) proportion of both women and men obtain extensions of their tenure clock for various reasons, women whose clocks are extended into their eighth year are less likely than men to be promoted to tenure.

[15](#) Even more distressingly, among minority law professors, we see an even worsening of the gender gap within some racial groups. For example, among Asian American and African American law professors hired in 1996, the gender gap in the rate of the tenure increased to the detriment of Black and Asian women. See Table 5E (7 yr tenure rate, 96-97).

[16](#) See Tables 3F (8 yr tenure rate, 96-97), 3E (tenure rate, 90-91), 5E (7 yr tenure rate, 90-91), 5E (7 yr tenure rate, 96-97). Rick White concludes, "The disparity [in 96-97] is much greater than that seen in the 1990-91 cohort." Dec. 14 Prelim. Report, 14.

[17](#) Finally, we noted that when race and gender are combined, there are disturbing changes in the relative ordering of tenure rates. For example, looking at the 90-91 cohort, we see that minority men have the lowest tenure rate (57%), followed by women of color (62%), white women (65%), with white men having the highest rate of tenure of any race/gender combination (81%). For the 1996 cohort, the ranking shifted for the seven year tenure rate resulting in women of color (33% rate of tenure) replacing men of color (39% rate of tenure) at the bottom. See Tables 3D (7 yr tenure status, 90-91), 3D (7 yr tenure status, 96-97). This could well reflect longer tenure clocks for women in their child-bearing years, since by the year 8 tenure rate, men of color are again at the bottom with a 42% rate of tenure, compared to 52% for women of color, 65% for white women, and 77% for white men. 3F (8 year tenure rate 96-97). But these findings suggest the importance of continuing to track race/gender variations in the profession.

[18](#) See Tables 5E (7 yr tenure rate, 90-91) and 5E (7 yr tenure rate, 96-97).

[19](#) Add cite to table

[20](#) For example, at least one of the 11 Latinos hired in 1996 received tenure but had failed to update her AALS form to indicate this fact. In another case, one of the 11 has received a two-year extension to his tenure clock and expects to eventually be granted tenure. These kinds of anomalies, however, are not unique to Latino candidates or minority candidates in general. In other words, we should expect to see the same degree of variation across racial groups (e.g., the percentage who did not update their forms to reflect tenure promotions).

[21](#) The Committee has discussed a variety of specific ways in which the data might be misused, including as a rationale for blocking the recruitment or hiring of minority law professors at a particular school and as a rationale for not seeking to enter law teaching by individual minority lawyers.

[22](#) Professors Devon Carbado and Mitu Gulati similarly described law school tenure processes as “low-powered environments”: “Law school tenure processes are “low-powered” promotions schemes; the criteria for promotion are purposely ambiguous.” Carbado and Gulati, *Tenure*, 53 J. of Legal Ed. 160 (June 2003).

[23](#) We agree with Carbado and Gulati that “overt racial or other animus does not figure prominently in the tenure process ... law faculties are neither structured by, nor organized around, *intentional* discrimination.” Carbado and Gulati, 159. Indeed, our point is that it is precisely the unconscious and institutional (rather than individually propagated) nature of promotion dynamics that produce the racial gap in tenure rates.

[24](#) Many of these factors, of course, affect (to greater or lesser degrees) all candidates facing promotion to tenure. Many of them have affected, in particular, white women in addition to racial minorities; although the near-closing of the gender gap between white women and white men suggests that these factors have become far less important in the promotion process for white women. Our claim is that, on average (and in the aggregate), these factors are more likely to affect minority law professors. The corollary to that is that, if we pay increased attention to them, we can close the racial gap in promotion to tenure.

[25](#) The 2005-2006 Committee's Chair, Professor Leonard M. Baynes, recently completed the chairmanship of the AALS Minority Section. On Jan. 19, 2005, he sent an email to the minority law section list serve advising members about this study and asking them to provide “first hand accounts of disparate treatment of faculty members of color at your current or former institutions.” He received nearly a dozen responses. Professor Baynes also conducted a literature review of law review articles germane to this issue.

[26](#) Committee member Dean Suellyn Scarnecchia used the dean's listserv to generate comments and “best practices” from deans with respect to minority recruitment and retention. See Scarnecchia email to the Committee dated Friday, March 11, 2005.

[27](#) Sociologist Troy Duster, who in 1992 served on the AALS's Special Commission on Meeting the Challenges of Diversity, notes that “the point at which this mass becomes “critical” is not absolute, but contingent upon the salient social, political, and cultural context.” Duster, “What We Can Learn From Other Experiences in Higher Education,” in *Perspectives on Diversity* (AALS publication, 1997 [check date], website), 2.

[28](#) According to this dean, (email correspondence with Suellyn Scarnecchia)

[29](#) As one dean noted, “We strive to create an environment that demonstrates a strong commitment, by our community as a whole, to diversity. This, in turn, enhances our ability to retain minority faculty. To

this end, we created, for example, an Office of Diversity Services and a diversity day for entering first-year students.”

[30](#) For example, as recently as a decade ago (1993-94), 40 percent of ABA accredited law schools had only one or two minority faculty members. Lee E. Teitelbaum, “First-Generation Issues: Access to Law School,” in *Perspectives on Diversity* (AALS publication, 1997 [check date], website), 8.

[31](#) “Retaining Faculty of Color,” August 1996 AALS Newsletter.

[32](#) Peter C. Alexander, *Silent Screams from Within the Academy: Let My People Grow*, 59 Ohio St. L. J. 1311 (1998).

[33](#) *Id.*

[34](#) See, e.g., Richard Delgado & Derrick Bell, *Minority Professor's Lives: The Bell-Delgado Survey*, 24 Harv.C.R.-C.L. Rev. 349, 352 n. 10 (1989); Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F.L Rev. 503 (1986).

[35](#) Pamela J. Smith, *Symposium: Failing to Mentor Sapphire: The Actionability of Blocking Black Women From Initiating Mentoring Relationships*, 10 U.C.L.A Women's L.J. 373, 403-04 (2000).

[36](#) *Id.*

[37](#) *Id.*

[38](#) *Id.*

[39](#) *Id.*

[40](#) *Id.*

[41](#) Robert A. Williams, Jr. *Symposium: Representing Race: Vampires Anonymous and Critical Race Practice*, 95 Mich.L.Rev. 741, 746 (1997).

[42](#) *Id.* at 751.

[43](#) *Id.*

[44](#) *Id.*

[45](#) Telephone Conversation between Professor Leonard M. Baynes and an anonymous faculty member #1 on Jan. 24, 2005.

[46](#) *Id.*

[47](#) *Id.*

[48](#) Rhode, *Midcourse Corrections: Women in Legal Education*, 53 J. Legal Education (Dec. 2003), 482.

[49](#) *Id.*

[50](#) Additionally, of the trilogy of tenure criteria (scholarship, teaching, service), service is the least valued in the academy. Rhode, *id.* ("And it is research, of course, that matters most in the law school reward structures."); Carbado and Gulati, 159 ("Scant attention is paid to service, the third element of most law school tenure decisions.")

[51](#) Alex M. Johnson, Jr., "Scholarship in a Diverse Legal Academy: Incorporating Outsiders' Perspectives," in *Perspectives on Diversity* (AALS publication, 1997 [check date], website), 2.

[52](#) *Id.*

[53](#) Telephone Conversation between Professor Leonard M. Baynes and an anonymous faculty member #3 on Jan. 21, 2005.

[54](#) *Id.*

[55](#) Email sent to Professor Leonard M. Baynes on Feb. 15, 2005 by anonymous faculty member # 5.

[56](#) *Id.*

[57](#) *Id.*

[58](#) Telephone Conversation between Professor Leonard M. Baynes and an anonymous faculty member #1 on Jan. 24, 2005.

[59](#) *Id.*

[60](#) Email sent to Professor Leonard M. Baynes on Jan. 26, 2005 by anonymous faculty member #2.

[61](#) *Id.*

[62](#) *Id.*

[63](#) *Id.*

[64](#) *Id.*

[65](#) *Id.*

[66](#) *Id.*

[67](#) Email sent to Professor Leonard M. Baynes on Feb. 15, 2005 by anonymous faculty member # 5.

[68](#) *Id.*

[69](#) *Id.*

[70](#) *Id.*

[71](#) Telephone Conversation between Leonard M. Baynes and anonymous faculty member #4 on Jan. 24, 2005

[72](#) *Id.*

[73](#) *Id.*

[74](#) *Id.*

[75](#) *Id.*

[76](#) *Id.*

[77](#) *Id.*

[78](#) *Id.*

[79](#) *Id.*

[80](#) *Id.*, at 2; *see also supra* notes 39-46 and accompanying text.

[81](#) Retaining Faculty of Color, AALS Newl., Aug. 1996, at 1.

[82](#) *Id.*

[83](#) Telephone conversation between Professor Leonard M. Baynes and an anonymous faculty member #3 on Jan. 21, 2005.

[84](#) *Id.*

[85](#) *Id.*

[86](#) *Id.*

[87](#) Telephone conversation between Professor Leonard M. Baynes and anonymous faculty member #1 on Jan. 24, 2005.

[88](#) *Id.*

[89](#) *Id.*

[90](#) *Id.*

[91](#) *Id.*

[92](#) *Id.*

[93](#) *Id.*

[94](#) Leland Ware, Symposium: *The First National Meeting of the Regional People of Color Legal Scholarship Conferences: Celebrating Emerging Voices: People of Color Speak: People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention*, 20 B.C. Third World L.J. 55 (2000) (author discusses the organization of the Midwest People of Color Conference). There are several other regional people of color conferences that have annual meetings that mentor junior minority faculty. They are: Northeast People of Color, MidAtlantic People of Color, Southeast/Southwest People of Color, and the Western People of Color conferences. In addition, there are several other ethnic conferences that take place periodically and also mentor junior faculty members of color. They are LatCRIT and the Asian American and Pacific Islander Legal conferences. Law schools should support and encourage their junior faculty members of color to attend these conferences.

[95](#) Margaret Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communications, Pedagogy and Discourse*, 5 Mich. J. R. L 847, 905-08 (2000).

[96](#) *Id.*

[97](#) *Id.*

[98](#) Telephone Conversation between Leonard M. Baynes and anonymous faculty member #7 on Jan. 31, 2005.

[99](#) Pamela J. Smith, *Forging Our Identity: Transformative Resistance in the Areas of Work, Class, and the Law: The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. Davis L. Rev. 1105, 1112 (2000).

[100](#) Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, The Life of One Blackwoman in the Legal Academy*, in *Critical Race Theory: the Cutting Edge* 498, 498-99 (Richard Delgado ed., 1995).

[101](#) Donna E. Young, *Two Steps Removed: The Paradox of Diversity Discourse of Women of Color in Law Teaching*, 11 Berkeley Women's L.J. 270, 282 (1996).

[102](#) Email from Anonymous Faculty member # 6 on February 15, 2005.

[103](#) Email *supra* note 54.

[104](#) *Id.*

[105](#) Peggy C. Davis, Symposium: *Law as Microaggression* , 98 Yale L.J. 1559 (1989).

[106](#) Anonymous Faculty Member # 1 Telephone Conversation, supra note 44.

[107](#) *Id.*

[\[Back to AALS Publications\]](#)