



Association of American Law Schools

November 21, 2012

President

Lauren K. Robel
Indiana University -
Bloomington

President-Elect

Leo P. Martinez
University of California-
Hastings

Immediate Past President

Michael A. Olivas
University of Houston

Serving through 2012

Ann C. Shalleck
American University

Serving through 2013

Pat K. Chew
University of Pittsburgh

Paul Marcus

College of William & Mary

Serving through 2014

Blake D. Morant
Wake Forest University

Kellye Y. Testy

University of Washington

Executive Director

Chief Executive Officer
Susan Westerberg Prager

Managing Director

Jane M. La Barbera

Associate Director


Linda D. Jellum

Assistant Director

Rachel A. Wilson

MEMORANDUM 12-21

TO: Deans of Member Schools

FROM: Susan Westerberg Prager, Executive Director 

SUBJECT: Issuance of a New Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members

Earlier this month, the Executive Committee approved a new Statement of Good Practices that it hopes will assist you and your faculty: a Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members. As is the case with all Statements of Good Practices developed by the Association, this Statement does not establish requirements of membership. In this instance, the Statement offers practical suggestions and approaches that relate to one of the Association's core values, diversity, and to a requirement of membership, namely Bylaw 6-3(c), which states that AALS members shall seek to have a diverse faculty, staff, and student body with respect to race, color, and sex. As the new Statement recognizes, many of the practices suggested apply to recruitment and retention more broadly.

As many of you will remember, we sought your comments and those of your faculty in the summer of 2012. Valuable feedback was received by the Committee on Recruitment and Retention of Minority Law Teachers and Students, and the Executive Committee approved a few further changes.

Many faculty members contributed in significant ways to the effort that culminated in this Statement. In the early 1990s, members of the Committee on the Recruitment and Retention of Minority Law Teachers and Students asked the AALS to track faculty retention data over a period of time in order to gain a greater understanding of the retention of faculty of color in member schools. The Executive Committee granted this request and in 2004, a report was released entitled "The Promotion, Retention, and Tenuring of Law School

Memorandum 12-21
November 21, 2012

Faculty: Comparing Faculty Hired in 1990 and 1991 to Faculty Hired in 1996 and 1997.” Informed by the study, in 2007, 2008, and 2009, the Committee then hosted Annual Meeting programs that focused on minority faculty recruitment and retention. These discussions were not only extensive but rich in their content.

In the summer of 2009, the Committee determined that it would take the ideas generated through the programs to create statements of good practice on the recruitment and retention of minority law faculty. This was a challenging and important effort, driven by a number of past and present members of the Committee on Recruitment and Retention. The draft statements were then reviewed by the Executive Committee, and the Committee on Recruitment and Retention of Minority Law Teachers and Students edited the documents further in light of the Executive Committee’s recommendations. Ultimately, the Executive Committee decided that the two statements should be combined, and a subcommittee of the Executive Committee did excellent work in producing a shortened well-integrated statement.

As is customary with Statements of Good Practices adopted by the AALS Executive Committee in the past, this Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members will be published in the February *AALS* Newsletter, the Association *Handbook*, and on the AALS website.

In conveying the Statement to you, the Association wants to express appreciation to the many faculty who have contributed to the Statement and thus furthered the efforts of our member schools to build diverse faculties.

Attachment: Statement of Good Practices

cc: Deans of Fee-Paid Schools
Executive Committee
Committee on the Recruitment and Retention of Minority Law Teachers and Students



Association of American Law Schools

Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members

A core value of the Association of American Law Schools is a commitment to recruiting and retaining a diverse faculty. See Section 6-1 of the AALS Bylaws. Law schools should embrace racial and ethnic diversity, including diversity among faculty, as a factor that strengthens the institution and its educational mission. Many schools have experienced particular difficulties, however, satisfying the AALS core value and their own value of a diverse faculty. While many of the strategies suggested below would improve the recruitment and retention of faculty generally, this set of Good Practices is especially relevant to recruiting and retaining diverse faculty. The AALS recognizes that every member school is subject to the particular constraints of its geographic locale, its public or private setting, its local jurisdiction, and other defining characteristics. Thus, the practices suggested in this statement can be adapted to the needs of each school, and other strategies may be effective in achieving faculty diversity.

I. Recruitment

Setting the Tone. Deans should set the tone regarding the importance of diversity in faculty hiring and recruiting by emphasizing the significance of hiring racially and ethnically diverse candidates to their faculty members.

Self-Study and Evaluation. Law schools should undertake serious and ongoing self-study and evaluate their progress toward achieving a diverse faculty and develop strategies as a community for improving this progress. Regular faculty meetings are not always the best way to advance a school's efforts. Faculty retreats or other dedicated events can better focus the faculty's efforts. The AALS maintains a faculty group of retreat facilitators called the Resource Corps which schools may want to call upon to assist in their self-study and evaluation of faculty diversity. Interested schools should contact the office of the Executive Director of the AALS to schedule an on-site visit with Resource Corps members. The Executive Director should be contacted at least 6 months prior to any Resource Corps visit.

Discussions About Faculty Searches and the Role of Diversity. At the commencement of the hiring season, Deans should lead their faculties in discussions regarding the qualities being sought in faculty candidates and how those qualities give practical effect to the school's mission or goals. Before any consideration of individual candidates, Deans should also lead their faculties in a conversation about the value of diversity, its role and significance in faculty searches, and the institution's commitments under the AALS Bylaws. Deans should consider charging their Appointments Committees broadly so that their Committees may pursue promising minority candidates even if the candidates do not fit a pressing curricular need of the law school.

Diverse Committees. When constituting Appointments Committees, Deans, Associate Deans and faculties should lay a solid foundation for success with the appointment of Committees that are themselves diverse. At the same time, Deans and Associate Deans should be careful not to overburden underrepresented minorities on their faculties with committee service, especially if they are pretenure.

Accountability. Appointments Committees should report to their Deans and Associate Deans regularly to ensure that any faculty search includes a diverse pool of candidates and to explain the lack of diversity in any affected search pool. Whenever possible, the Dean and the Committee should develop diversity goals and should periodically assess at every stage of the search process, including early stages, whether they are meeting these goals. Deans and Associate Deans should be willing to reject non-diverse pools and/or to continue their searches if it is determined that the developed pools could have been more racially and ethnically diverse. Deans should also assess the performance of the Appointments Committee by its success in attaining these diversity goals.

Expansion of Searches. Law schools should seek faculty candidates through both the AALS Faculty Appointments Register (FAR) and non-traditional avenues, including searching state, local, and federal government agencies; working with minority specialty bars to find good candidates; seeking faculty candidates through workshops and programs such as the regional people of color legal scholarship conferences, legal writing institutes, and clinical conferences; and accessing existing academic structures such as teaching fellowships, LL.M. programs, Visiting Assistant Professor programs, and PhD programs. Deans should encourage their faculty members to be on the lookout for promising minority talent at conferences and in other venues and, if appropriate, work with minority specialty bars to find good candidates. Deans can individually reach out to faculty of color and solicit suggestions for expanding the pool of potential applicants. Deans should encourage each individual Appointments Committee member to search through all the files available in the FAR or to assign more than one person to review individual forms rather than splitting the files among the Committee membership so that each candidate receives appropriate attention from more than one Committee member. Faculties should consider candidates who are promising but who may not fit the traditional model of faculty candidates. Faculties should broaden search criteria by considering candidates who, for example, may have graduated from a broad array of law schools or who have practiced for extended periods of time or who have worked in the public interest sector. Faculties and deans should keep in mind that the pool of JD/PhD candidates of color is small and competitive, and limiting searches to the traditional model will decrease the chances of having a racially and ethnically diverse pool or hire.

Transparency. Faculties should create a document that describes on-campus interviews, including the goals and objectives of the job talk and other important aspects of the campus visit, the expected duration, the standards likely to be employed by the faculty and any interview questions to be expected. Thereafter, faculties should distribute the document to each candidate well in advance of on-campus interviews. A committee member should be assigned responsibility for answering questions raised by the candidates.

Pipeline Strategies. Faculties should be vigilant in working to build a pipeline of diverse students who may become law professors. Faculty should encourage minority students to seek journal positions and clerkships and to develop good seminar papers into longer law review articles. Faculty should encourage promising minority students to consider law teaching and should advise them on the hiring processes including when to enter the market and what alternative educational and writing opportunities such as fellowships and LL.M. programs exist that may give the student a competitive edge.

Fair Discussions. Every minority candidate who gets called back for an on-campus interview should be fairly discussed on the merits and the Dean should be appraised on the progress of that assessment and/or whether a vote is taken at the Committee level. Deans should assess whether to charge the committee to have further discussion on candidates in light of the specific diversity goals.

Visiting Assistant Professor Programs (VAPs). If possible, schools should consider creating Visiting Assistant Professor Programs or fellowships that include underrepresented persons. These programs should provide good, but not burdensome, teaching opportunities and allow substantial time and support for writing articles. These can be post-JD or post PhD fellowships and do not have to have teaching responsibilities. [AALS will maintain a list of member school programs on its website.]

II. Retention

Law schools invest substantial faculty time, resources, and institutional funds identifying and recruiting new hires. These resources prove unproductive if new hires do not receive tenure, or relocate early in their careers because of dissatisfaction with an institution, or abandon the legal academy. When schools successfully retain new hires, especially those who are racially, ethnically, or culturally diverse, schools are oftentimes better able to experience continued success in their recruiting of other diverse faculty.

Setting the Tone. As with the issue of hiring of faculty of color, the Dean is responsible for setting a positive tone for retention. Deans should find occasions to talk about the reasons diversity is important, the obstacles the school must overcome to achieve diversity, and his or her expectations about what the faculty will do to succeed in this area. The Dean should also be active in hiring and retention matters, in order to keep diversity issues on the front burner.

Self-Assessment. Tenured faculty members at a law school should reflect upon the law school's past experiences with tenure-track hires of color and identify ways to improve their retention efforts. This informal work by faculty should be part of an ongoing process of self-evaluation.

Education About How Bias Operates, Including Implicit Bias. Deans and Associate Deans should take steps to ensure that the faculty are informed about the nature of bias in today's law school environment and the obstacles that law faculty of color face. These obstacles include double standards or extra scrutiny in reviewing their scholarship, extraordinary service burdens, and students' presumptions of teaching incompetence. Deans should ensure discussion of these issues by the faculty.

As part of the education process, Deans should provide resources to the faculty, including law review articles that may assist them in understanding potential obstacles and problems for pretenure faculty of color. [AALS will maintain a recommended list of articles on its website.] Trained outside consultants can also provide insight on the experiences of faculty members of color on predominantly white faculties. The AALS Resource Corps can provide a source of potential consultants who will assist the school in faculty discussion and planning. Education about the experiences of minority law faculty members is sometimes necessary to ensure a realistic sense of bias, both conscious and non-conscious, in the legal professorate today. Additionally, on-campus speakers, events, web resources, and other similar steps can help raise awareness of these issues among faculty, staff and students.

Creating a Supportive Environment. Law schools should create a supportive work environment for all faculty members. A workplace environment with a diverse faculty, staff, and student body and on-campus programming that explores the many aspects of diversity and cultural competence are key to this goal. Creating this kind of workplace environment includes appointing persons of color to leadership roles in the law school, including associate/assistant deans, directors, and committee chairs. It also includes hiring enough minority law faculty so that no minority faculty member feels the burden of being a "society of one."

Critical Mass Hiring. When law schools have only one or very few faculty members of color, a true culture of inclusiveness is difficult to achieve. When a law school has only one or a very small number of faculty members of color, a faculty member of color may be placed on a committee or included in a discussion for the sake of the appearance of having diversity, but his or her opinions may not be valued and respected when they reflect disagreement with majority faculty members. One way to avoid this potential problem is to have a critical mass of faculty of color at one's law school.

Use of University or External Resources in Evaluation. Law schools also should look to University committees that address diversity or to external resources such as trained outside consultants or the AALS Resource Corps to help them evaluate their environments and their failures and successes with minority faculty retention. For example, a consultant or a University committee that addresses diversity may be able to assess the law school environment, by way of anonymous surveys/interviews. Anonymity is crucial for obtaining true assessments about law school environments for minorities and for ensuring that pre-tenured faculty members of color are not placed in the position of complaining about the law school environment to members of the faculty who will then vote on their tenure.

Active Mentoring. Studies show that individuals tend to mentor and seek out mentees who are like them, which can leave faculty members of color on predominantly white faculties at risk of being overlooked. Strong mentors are especially important for the success of pretenure faculty of color. Deans and Associate Deans should make mentoring a regular part of the performance evaluation process for tenured faculty. This should include adding a section on contributions related to diversity and mentoring on any Annual Faculty Report forms. Tenured faculty members also should ensure that their pretenure faculty members of color are not isolated on the faculty. They should help to make sure that their junior colleagues of color are getting to meet other faculty members by inviting them to lunch or to their house with other colleagues.

Deans and faculty members should consider the successes of their junior faculty as their own and of the institution and should invest in and celebrate those achievements. Good mentors will be aware of these successes and will broadcast the achievements of their mentees to the rest of the faculty; junior faculty members often find it difficult to promote themselves and their accomplishments to their colleagues. Senior faculty members should understand that mentoring involves assisting a junior faculty member to develop to his or her fullest potential, and not necessarily to follow the same intellectual path as themselves.

Pro-Active and Early Responses to Possible Problems. With regard to the specific obstacles that law faculty members of color may face, studies show that minority faculty members, particularly women of color, are more harshly judged than majority faculty members for the same work in student evaluations. Deans should have a system in place both to help untenured faculty with their teaching, and to ensure that teaching is evaluated without bias. Classroom issues need to be solved immediately because once the professor gets a negative reputation, it is hard to overcome. Thus, the system for providing help on teaching issues should have an early warning process.

Faculties should consider professionally-developed teaching evaluations or evaluations developed with the assistance of experts to minimize the influence of bias in course evaluations. In discussing teaching as part of a faculty member's annual evaluation process or tenure review, Deans and faculties should also take care not to replicate bias that may be present in the student teaching evaluations.

Clear, Communicated Tenure Expectations. Faculties should define in writing the promotion and tenure standards applicable to each candidate, whether entry-level or pretenure lateral hires. The standards should be fixed at hiring and remain unaltered during the candidate's progression to tenure. These written standards should be provided to and discussed with the faculty member at hiring. The standards should specify the process for securing tenure and other promotions, the quantity and quality standards for scholarship, the requirements for obtaining peer reviews, and the standards for teaching effectiveness.

The Dean, or an appropriate committee designated to provide guidance and/or mentoring to junior faculty should meet annually with each pretenure faculty member to discuss the progression toward tenure, encourage any needed adjustments, and identify the time and resources available for professional development in teaching and scholarship. These meetings should be memorialized in writing.

Support for Gaining Tenure. Faculties should provide formal mechanisms for assisting faculty as they progress toward tenure review. Each law school should be flexible in terms of course scheduling, committee assignments, and other responsibilities allocated to pretenure faculty to ensure that the assignments are not so heavy as to serve as an impediment toward securing tenure. Many schools assign a lighter than average teaching load to entry-level instructors in their first year of teaching. Some schools assign a lighter than average teaching load in the year before tenure. The purpose of these lighter teaching loads is to permit sufficient time for teaching and scholarly development.

In evaluating workloads, the Dean should consult with untenured faculty about taking on new courses, the size of classes, and weighty service responsibilities. Law schools should be particularly sensitive to the fact that law faculty members of color often perform a great deal of invisible and burdensome service work in terms of mentoring and assisting students of color on campus. Other support for pretenure faculty might include pretenure sabbaticals and other release time; an institutionalized system of annual review by a tenure committee of faculty members selected in consultation with the faculty member; regular informal consultation with the Dean and Associate Dean on teaching, scholarship, service obligations, progress toward tenure, and related matters; assignment of supportive mentors; programs on scholarship and teaching; adequate funding of research assistance and monies to travel to academic conferences; support for teaching a seminar in one's area of primary research; facilitation of local opportunities for faculty to meet and present and discuss their scholarship, teaching and service; and related measures designed to support the professional development of the faculty member.

Support Resources Outside of One's Law School. Deans and Associate Deans should regularly provide law faculty members of color with information about resources that will enable them to develop the support networks necessary for success in legal academia. Deans and Associate Deans also should encourage law faculty members of color, especially those who have not yet earned tenure, to attend the annual AALS Workshop for Pretenure People of Color Law Teachers as well as Regional People of Color Legal Scholarship Conferences and other supportive conferences. Deans and Associate Deans also should encourage mentors and senior faculty members to forward information about writing competitions and conferences in the junior faculty members' fields as the senior faculty members learn of them.

Interaction Between Faculty and Students. Deans should encourage the development of positive relationships between a faculty member of color and his or her students. This might include funding to enable faculty members to host coffees, meals, or class events that will further the development of good relationships with their students. Such interactions are good policy generally, but often especially help faculty of color, who may be viewed more as outsiders by students in predominantly white institutions.

Supportive and Effective Reviews. To ensure successful development of junior colleagues, faculties should adopt and adhere to an open and supportive, rather than opaque or adversarial, pretenure process. The first evaluation, completed at a time early in an entry-level faculty member's career, is best utilized for helping faculty identify areas of strength to continue and areas of weakness to improve. While there should be an early warning system for possible classroom issues, as a general matter, faculties should not engage in mandatory peer reviews of teaching until the faculty member's second year of teaching. Faculties should work formally and informally with each candidate in a timely and ongoing manner to assist him or her in improving in any areas of concern. Individual faculty of color should be encouraged to sit in on other senior faculty members' class as well as be visited in their own classrooms by experienced, supportive teachers. Deans should identify the senior faculty who are most suitable for this role. Finally, Deans and Associate Deans should not tolerate faculty speaking poorly about other faculty with students.

Avoiding an Overload in Service Obligations. Deans and Associate Deans must play a special

role in ensuring that faculty members of color are not overburdened in terms of service. They particularly must resist the temptation to place junior faculty of color, who may represent limited diversity within the law school, on important and time-consuming committees that have the effect of burdening them with more service commitments than their majority peers. Deans and Associate Deans should especially shy away from appointing untenured minority faculty members to chair committees and should avoid placing pretenure minority faculty members on very time-consuming and politically sensitive committees such as the Appointments Committee or Admissions Committee. In addition, Deans and Associate Deans should avoid placing pretenure minority faculty members on Dean Search Committees or on curriculum committees if there is a controversial issue on the agenda. Deans and Associate Deans who find it impossible to avoid burdensome service obligations for faculty members of color may, however, achieve more balance by providing relief to such faculty members by adjusting other obligations, such as course selection and course load.