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MINORITY LAW TEACHERS' MEETING

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- Walter J. Leonard
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Harvard University
- Harry W. McGee, Jr.
Professor of Law
University of California (Los Angeles)
- Discussants: Derrick A. Bell, Jr.
Professor of Law
Harvard University
- Drew S. Days, III
Associate Professor of Law
Temple University
- Charles T. Duncan
Dean, School of Law
Howard University
- James E. Jones, Jr.
Professor of Law
University of Wisconsin
- Patricia King
Associate Professor of Law
Georgetown Law Center
- Richard Taylor
National Chairman
Black American Law Students' Association

BELL.

Let me talk for just one moment about the Minority Law Teachers' Planning Conference held at Harvard in September. There was no structure; there was nobody in charge; there was no one to be elected; there were no constitutions to be adopted and by-laws and things like that. We were able to come and focus directly on the problem at hand. Most of us who were in attendance felt that it really was a successful and a valuable meeting. I hope all of you have received copies of the report that was prepared attempting to summarize the results of those sessions. The response that I have gotten from some of you who did receive them have been very encouraging.

While I called the meeting because I thought I was in a position to be help to others, I cannot imagine that any of us got more from the meeting than did I. As a result of what was said at that meeting and as a result

of going through the tapes and my notes and preparing the summary I learned a lot about myself, my role at the school, what I should be doing and what it was not going to be possible for me to do.

I shared that report with a few of my colleagues who are not black; some of them came back and also indicated that they have been moved. That brings up one of the things that I wanted to raise with the group. As you note from the report, the conference was about minority law teacher administrative problems. I am thinking that it would be very worthwhile if copies of this report could be sent with the appropriate covering memo to every dean in the country. I say every dean because there is an awful lot of information in this that will help an individual dean keep his school functioning and that he might not come up with on his own. Because we had not discussed how the report would be used at the meeting, and because in most conferences reports are promised and never are forthcoming it seemed to me appropriate before doing anything more with the distribution of the report to bring suggestions to you and get your comments and I would like to do that.

A second point growing out of the conference was that it would be very worthwhile if we could get some substantiation of some of the conclusions of those who were at the meeting. To that end, I have prepared a questionnaire that reviews some of the conclusions and asks the individual who is looking at the questionnaire, to answer questions that would indicate whether that individual has had similar experiences, different experiences, etc., etc. It seems that that would be more information that would be valuable to us all. To be perfectly frank the reason I haven't sent out the questionnaire is because I wanted some feedback from you as to how is the best way to get a response. If a questionnaire doesn't come back, it's wasted time and effort. It would be worthwhile to have some sense of how you think this might best be distributed (assuming you think it's a good idea) so that it would be gotten back.

Third, we are planning a new list of minority law teachers to update and correct some of the information on the last list. An effort has been made to get information from you concerning what courses you're teaching and what writings you've had published. It seemed to me that that would be worthwhile information that someone looking at that list might like to have without having to go to the Index to Legal Periodicals. A form requesting that information was sent out but only a few persons responded, so some feedback as to how best I might get that kind of information might also be helpful. Also, before we close today it would be worthwhile to get some ideas and suggestions as to where we might go from here.

KING.

I have been asked to summarize in less than 15 minutes what transpired in 2 days of meetings at Harvard. I'd like to urge all of you, if you haven't done so already, to read the Report of the Minority-Group Law Teacher's Planning Conference. I think we owe a real debt to Professor Derrick Bell for doing all the groundwork for the meeting, putting together the list, and all the work that went into that Report. I'd like to start by saying that those

of us who were attending the session were attending for special reasons. We were minority professors in predominantly white institutions. We were teaching black and white students, mostly white. We were also attempting to work out some relationship with the community at large, black and white. As individuals, we faced unique and demanding external and internal pressures, generated by the circumstances in which we found ourselves.

To varying degrees, over the two days, it was obvious that certain things emerged in terms of expectations that we had of ourselves and our role within our respective institutions. Some of us saw ourselves as part-time administrators, especially in areas that involve minority students and recruiting and student activities. Some see us as counselors in attempting to counsel minority students who have problems in our institutions. Others see us as gadflies, who must take the lead in pushing our institutions to increase minority faculty and to increase minority students.

The sessions, were divided along the following lines. We talked about recruiting, promotion and tenure. We talked about the problems of teaching in the classroom, we talked about problems of the law school administration, we talked about how to get things published, what to publish, how to write. We talked about outside activities, outside meeting, outside of law school activities, and we had a long session in terms of psychiatric realities in which we talked to a psychiatrist about some of the stresses and strains we all felt.

Basically, the conclusions that we reached with respect to expectations in terms of how we teach, how we relate to our white colleagues, how we relate to our black colleagues, how to relate to white and black students were the following: (1) The best thing we could do would be to identify the various expectations, especially our own; (2) Each person had to decide what he or she intended to do about them; (3) The most important thing to learn is that we could not be all things to all people and that we had to focus on those things that we could do best, those things we wanted to do and learn how to say "No"; (4) In the area of expectations we cannot generalize. How we deal with expectations is an individual matter that is governed by each individual's personality and each individual's framework.

The "Summary" of the Report accurately sets out the conclusions reached in the various other areas. So I'll be brief. We concluded that the number of minorities in law teaching would be increased as a result of our efforts both in identifying attractive candidates and recruiting them. We decided to pay close attention to classroom evaluation of minority law teachers to determine to what extent the results are skewed by racism and/or unreal expectations of white and black students. As for writing, we concluded that it was imperative that we ascertain what the writing standard was at our respective institutions and provide ourselves some insurance by writing several pieces. Finally, while there was general agreement that we had a critical activist role to play in the community, we concluded that we would be wiser and more effective to wait until after tenure before engaging in substantial outside activities.

What was most significant about the conference was that we had an opportunity to exchange views about our common problems and about how

each of us was trying to solve them. We came with the feeling we wanted to work to create a network which would ultimately serve our purposes and our goals.

DUNCAN.

I have been asked to comment briefly on the conference and to highlight some of the issues that seemed important and not important to me from the perspective of a black administrator at a predominantly black law school, and to perhaps offer some suggestions for solving some of the problems thus identified. I don't have any solutions so I can be very very brief. The one thread that ran throughout the conference was the minority teacher's concern about the presumption of incompetence which he repeatedly faced and the necessity to continually prove that he or she knows the law, is able to conduct a class and can add something to the white minds that are sitting there. This came up in terms of hiring problems, in terms of classroom reception by the students and in terms of the faculty reception. Throughout all the scholarly activities of a minority law professor, this need to prove oneself was demonstrated and attested to over and over again.

The intensity of concern for that problem surprised me a little bit, but I think that was due more to personal naivete than anything else because upon reflection, it's quite obvious that the kind of racism that we have grown up with and lived with from the day of birth is still very much there and what's being articulated in a contemporary context is really something that we have known all along. Professor Bell's observation earlier today is quite relevant here. As with the slave, blacks in this country 110 years later can still only move forward at the pace that we are either able to demand through force, (and that's not a great deal) or at a pace that is either not threatening or can't be resisted by the white majority.

Another point that I thought was of interest is the one that Professor King just mentioned. That is, recognition of the need to pool resources, both with respect to developing a source of new teachers and in the area of writing and research and in the various kinds of mutual self help that we can all give each other simply because we have been there and have seen what the problems are.

I was struck by the concern for tenure. Tenure considerations occupied a reasonable amount of the deliberations of the conference, but that was a perfectly normal thing I thought and we certainly have that problem at Howard and I think it exists throughout the academic legal community. One concept that troubled me a little bit was the great deal of concern for roles and role models. What role is the minority teacher supposed to play to the student, other members of the faculty, to the central administration, to the community? Initially, I felt that this concern came very close to bordering on paranoia, but as the conversation continued, and as other comments were made, it became perfectly obvious that whether you want to assume a role and identify a role for yourself or not, you are forced into that position. The students see you in a role, your colleagues see you in role, so you might just as well determine and decide what that role is and then

try to live up to it. (Incidentally, Walter Leonard has distributed a very excellent piece on expectations which is right on point here and I understand that that's available for distribution if anyone is interested.)

I obviously don't have any solutions. If I did I would write the great American legal classic and retire. It does seem to me relevant to say that all of us as not just minority law teachers, but as members of a major minority group in this country have got to persevere. We have never been judged at any time that I know of in my lifetime and I suppose it's unrealistic to expect that suddenly in 1974, in academic positions in predominantly white schools that we are going to be judged the same way that our white colleagues are. The kinds of problems, the kinds of sensitivities that the minority law teacher has in predominantly white law schools, is shared by our non-teaching colleagues elsewhere. It is certainly true of the young attorneys I know who have become associates in law firms, particularly the larger law firms. They have the same entry problems. They have the same problems of proving themselves to be worthy of promotion, worthy of pay and worthy of responsibility commensurate with their white colleagues. I have had less experience with it in large corporations and companies, but I have no reason to doubt that the same thing is true there. I think really what the conference says and what the comments here today have said is that problems that we find ourselves in on law faculties are really reflections of a greater problem that we all have as blacks and minorities in this country.

JONES.

One should never underestimate the power of the written word, however dry, if it speaks to the heart. I am here because of the Report on the Minority-Group Law Teachers' Planning Conference. Since I have gotten it, I have been carrying it around with me. One thing it did for me was to still the quiet voice inside that suggested I was really paranoid. It assured me that the problems and pressures I have experienced in my five and one-half years at a predominantly white law school are shared by my colleagues across the country.

[Professor Jones' prepared remarks are reprinted in full pp. 488-494 *infra*].

TAYLOR:

Minority law faculty are a most valuable resource for minority law students. My purpose in being here today is to apprise you of our problems and solicit your support.

There is an inadequate amount of information available on the admission policies of most law schools. Although black law students have spent a great deal of time and effort recruiting, this lack of information had made much of our efforts of no avail. Furthermore, minority applicants are obviously often confused, frustrated and discouraged in the sparcity or non availability of information. It is not at all surprising that after six or seven rejections an applicant may just give up.

Once in school, the discouragement may be even greater. Law Review status has seemed almost unattainable by Black students attending predom-

inantly white institutions. Moreover, complaints about discriminatory grading practices are increasing in both frequency and intensity. The latter problem is one which even more than in counseling and admissions that minority faculty are in a unique position to assist on. As black academicians, you are trusted by both sides and thus can intervene in this type of situation. It is important that my office be able to call someone and say "there's a problem at Law School X, could you send a team of black law faculty down to evaluate the situation and advise us?" We must develop some mechanism to respond to these critical situations before they become crises.

As an initial step I would like to invite this group to send a delegation to the BALSAs national convention which will be held March 27-30 at the Atlanta University complex. Hopefully, this delegation can join with us to consider the details and develop specific plans to deal with the problems I just outlined. Moreover, I would like to invite two members from this body to participate as voting members of our national board. I ask no reciprocity. This is important for we need your input, your insight and your guidance.

Thank you for inviting minority students to participate in this session. I hope what I have outlined above will provide the basis for established a permanent and mutually rewarding relationship.

DAYS.

I was asked to talk about the role of black law professors in the continuing education of the black bar. Underlying that request was an assumption which we may not all share. That assumption is that black law professors have a special and unique responsibility and role to play with respect to the black bar. I operate on the premise that we do have a special responsibility a unique role and that we are not in the position of many majority law professors who enjoy the luxury of being begged to participate in continuing education sessions and paid very well for that activity. I think we are in the position where we as black law professor will have to initiate this relationship.

Let me describe (assuming that you accept the premise) how I would go about doing that and how I think members of this section should begin developing techniques to establish a relationship with the black bar. First of all, I would focus on the black private practitioner. We know that blacks are doing many things in the legal world these days, but the real crunch occurs at the level of the black practitioner. I would like to describe a reality that many of you know, if not first hand, through some type of osmosis. We are talking about practices referred euphemistically as the "folk" practice. It is a walk-in practice. It involves criminal litigation, domestic relations, personal injury, estates and commercial transactions, pretty much in that order. In terms of the way these offices are run, we are talking about hip pocket operations characterized by the absence of specialization or division of labor, poor accounting methods, inefficient operations, difficulty in finding and training competent personnel, difficulty in fee setting and collection, inadequate research tools and an unwillingness on the part of many practitioners, to learn new techniques and utilize new equipment in their practices.

We must also be sensitive to the fact that the black practitioner whether he or she likes it or not, has a social role to play in the community that involves pro bono work, civil rights cases, political consultations and civic involvement. So we must develop our forms of assisting black practitioners in the context of that reality.

In terms of continued education goals of black practitioners, it perhaps is unfair to break them down crudely into the older more established practitioners and the younger practitioners, but for convenience, I will do it here. In talking about the older established lawyers we have to take into consideration that, we law professors, are young people. Let me suggest that we as law professors cannot come in and suggest in any forceful way that black practitioners who have been making it for years one way or another should change their entire operation and should begin developing courses of litigation that they never had familiarity with before. Rather, let us start with the proposition that the older black practitioner is interested in making more money. And, I don't say that in any critical sense. Now they have been out there trying to stay alive for many years and the better they do it, I think the better off the community is at large. They are interested in ways they can expand their practices without diminishing income which they can develop new talent. They're interested in analysis of problems and developments in law affecting their existing practices from a perspective that's sensitive to their type of practice and their clientele.

There are numerous continuing education sessions run by bar associations and by commercial operations, but I think they fail in many respects to talk of these problems in terms that the lawyers can understand. They do not speak in terms of a client who comes in and requires a very detailed explanation of perhaps why lawyers do certain things, because they are accustomed to clients who are in the business world, who know what an invoice is, who know what certain contracts look like.

Minority law professors fill that vacuum. We must demonstrate to the black practitioners how the law can affect their practice at the most rudimentary levels. I think black lawyers, for the first time, are beginning to see a combining of civil rights and money-making practice that makes life very attractive in many respects. This is true of Title VII and in housing discrimination. I think we have a responsibility to communicate to those lawyers who may not be aware of it that there can be money made in this type of litigation.

The younger more recently established lawyers are interested in developing expertise in areas that have not perhaps been taken up by the older practitioner. There is particular interest in commercial and corporate legal problems, communications, real estate, and taxation. We again have a responsibility to bring to these practitioners information about developments in those areas at a level that is an accurate reflection of the problems and the clients that they are going to encounter. Describing the problems of the major corporation will not be very helpful to a black practitioner who is going to be dealing with numerous small businesses. These younger practitioners are more receptive to the concept of a law firm as a small business

and they want to make it work. It need not be a hip pocket operation. We ought to respond to that to the extent that we are able to do so by providing them with insights into new management techniques, paraprofessionals, diversified law firm arrangements.

As I indicated earlier, we have to be sensitive to the political and social roles that they play. Therefore, our continuing legal education programs should run from voting rights and Title VII, to prisons and police misconduct, housing discrimination and even that somewhat forsaken area of civil rights litigation, school desegregation. Apart from the very complex problems of desegregating systems and keeping them desegregated, there's a very immediate and compelling demand upon black practitioners to represent teachers and students who have been subjected, who are in fact the victims of the desegregation process.

Our response, must be structured through existing organizations. For credibility reasons, we should work through the national bar associations, and should work through the NAACP chapters, the Legal Defense Fund, alumni associations, and black law schools so that what we are attempting to do begins on a premise of credibility and of concern on the part of black professors for what black practitioners have to confront. In terms of the sessions themselves, we must address ourselves not so much in terms of what we think black practitioners ought to know, what great ideas we have come up with in terms of litigation and the development of certain legal approaches, but to what they want to hear. Perhaps it should be done at a very local level and not on a national level until sufficient information has been obtained as to what the real needs are. The emphasis at these sessions should be placed upon concise and direct delivery of accurate and practical information for practitioners. Lectures should be supplemented by written materials, model pleadings, lists of references, citations to cases, etc. These are the things that black practitioners need. They don't need, in my estimation, dissertations on the nuances of small points of law. They want to know directly and quickly how their practices can be improved.

If we are really committed to being not only black law professors, but members of a black legal community, we must meet this responsibility. We must begin to establish ties both in the national and on the local level with black practitioners so that we exist in a healthy environment. Thank you very much.