

Getting to Yes: Special Issues Confronting Pre-tenured Minority Law Teachers

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Introduction

As mysterious as the tenure process might be, it holds particularly difficult obstacles for minority law teachers that are less than obvious, even when you are in the midst of them.

I. Know your Goal, Constituencies, Process (and what you are up against)

a. Goal

i. "Just tenure"

1. Freedom to choose your own projects
2. Acknowledgement of your accomplishments

ii. Acceptance, acknowledgement, and admiration of your constituencies:

1. Scholars in your field (at other schools)
2. Colleagues on your faculty
3. Students

b. Constituencies (what they want)

i. Scholars in your field (at other schools)

1. Minority professors: you may be the first in this field, and possibly the first your colleagues ever met
2. They want to know you as a ("normal") person and respect you as a colleague

ii. Colleagues on your faculty

1. Minority professors: you may be the first in this field, and possibly the first your colleagues ever met
2. They want to know you as a ("normal") person and respect you as a colleague
3. They will be looking to see what your other constituents think of you
4. Even if they like you, they want to have their decision to hire you **vindicated in the eyes of other scholars in your field** and by their own students

iii. Students

1. Pay a lot of money for a legal education, but don't know what they should be getting in return
2. They want CONFIDENCE that what they are learning will be valued
3. They need to know (1st) that you are giving them exactly what they get in the same class anywhere else, and (2nd) that you are giving them a special experience for which they can be grateful

iv. Colleagues within your University

1. Want to be able to mention you when an issue in your field comes up elsewhere

2. Want to know that their university has someone competent in your position
3. These colleagues often serve on University committees that determine or advise on tenure decisions
- v. Alumni of your school
 1. Have extensive communications with your Dean and other members of your faculty
 2. Want to be proud of their school
 3. Want to see you having some impact on their world
- vi. Staff
 1. Want professors who treat them as human beings
 2. Will talk (to other professors) about your treatment of them, for better or worse
- c. Process
 - i. Know your University's and School's standards and procedures
 1. Read the wording like a good lawyer
 2. Understand (like a good lawyer) how the standard has been applied in the past
 3. Ask about cases where the standard wasn't met
 4. Model your behavior and work as something that would far exceed the standard in any case
 - ii. Tenure committee
 1. Usually appointed for each tenure candidate a year or two before you go up
 2. Dean will seek balance and "representativeness" in order to head off disputes before the case gets to the whole faculty
 - iii. Outside letters
 1. Most important part of the process
 2. Solicited by tenure committee from scholars in your field at other schools
 3. Schools differ as to number (usually 5 to 15 or more)
 4. Schools differ as to selection process
 - a. Some schools allow you to recommend a few names
 - b. Some schools also allow you to mention names of scholars whose opinion should be "discounted"
 5. Minority professors concerns with outside letters
 - a. Your work must provide an "objective" basis
 - b. Must overcome possible preconceptions and possible stigma of being given a position "you didn't deserve"
 - c. Groundwork MUST be done years earlier through conferences and workshop presentations (both home and away)
 - iv. Inside letters
 1. Colleagues
 2. Students
 3. Alumni
 4. Staff
 - v. Teaching evaluations
 1. Schools weight them differently
 2. Can hurt you more than they can help you

II. Do your work!

- a. Join a discussion
 - i. Advantages:
 1. Easier
 2. Allows you to “learn the language” of your field
 3. Flatters colleagues in your field (at other schools), EVEN if you disagree (honest flattery)
 4. Allows you to develop relationships with colleagues in your field (at other schools)
 - ii. Disadvantages:
 1. Often viewed as “singles” rather than “home runs”
 2. “reactive” rather than “pro-active” agenda setting
 - iii. **BOTTOM LINE:** Lower risk, lower reward strategy
- b. Start a discussion
 - i. Advantages:
 1. If successful, gets you lots of attention
 2. Viewed as “home runs” rather than “singles”
 3. Allows you to chart your own path, and follow your own interests and agenda
 4. Allows you to develop a “following” constituency
 - ii. Disadvantages:
 1. Doesn’t allow you to learn the language of a field
 2. Doesn’t provide as ready an opportunity to honestly flatter colleagues in your field at other schools
 3. Doesn’t allow you to develop relationships with colleagues in your field if your “discussion” area is too new
 - iii. **BOTTOM LINE:** High risk, high reward strategy

III. SPECIAL issues unique to Minority teachers

- a. Teaching issues
 - i. Student respect in the classroom
 1. Minorities and women new to law teaching are often placed in first year courses which colleagues do not want to teach
 - a. **PROBLEM:** First year students don’t know good teaching from bad, and they don’t know whether you are giving them “their money’s worth”
 - b. Student distrust could result from attitudes about affirmative action, or from your general inexperience
 - i. Difficult to separate the source
 - ii. Doesn’t matter if you do
 - iii. Even racist or sexist students get to fill out teaching evaluations anonymously
 - iv. You must develop student confidence regardless of the source of their distrust
 - v. You must do this EVERY year
 2. Discussion between Stanford colleagues:
 - a. Question: “Do you wear a jacket in the classroom?”
 - b. Answer: “Every Black law professor in America wears a jacket in the classroom.”
 3. Preparation eliminates mistakes;
 - a. Mistakes generate student distrust;

- b. Student distrust results in low teaching evaluations
 - c. Low teaching evaluations give rise to concerns that rest of the faculty must “carry” you (because students will avoid your classes)
 - 4. REMEMBER: you may be the first minority instructor some of your students have ever had!
 - a. They may have developed a subconscious belief that minorities are not to be expected to be at the front of the classroom, or that if they are, it is because of some social experiment
 - b. Even if they have had minority instructors before, they may not have had an instructor of any type which they felt was their intellectual equal
 - i. They are genuinely very bright; that’s why they applied to and got into your law school
 - ii. In some cases, they may be RIGHT! That doesn’t relieve you of your responsibilities to them or to your own career
 - iii. Put your ego aside and deal with them in a constructive way that allows you to teach class, get good reviews, and get tenure
 - ii. Student dialogue about you and other minority teachers outside the classroom
 - 1. Students can generate a substantial amount of “extracurricular” discussion about their instructors
 - 2. Subpar instructors get much of the attention
 - 3. Particularly nasty when the discussion is about instructor competence and “affirmative action”
 - a. No matter how just you might think the cause of affirmative action, the reality is that its existence creates a hurdle you must overcome with each new class of students
 - b. Last year’s success only raises expectations, which must be met every year
 - c. One bad year can ruin all of your hard work
- b. Scholarship issues
 - i. Many people define themselves by their work
 - 1. They are “special,” in their mind, because they can do something others can’t
 - 2. Some people have difficulty believing women or minorities can do what they do
 - 3. You will have to prove yourself to these people, whether they are on your faculty or in your field
 - ii. Many scholars have never dealt with minorities or women as equals
 - 1. They see them as students, or housekeepers, or doormen
 - 2. Our profession does not “bar” or “screen for” racists and sexists
 - 3. Even if it did, you would still need to make others “comfortable” with you
 - a. You may never know whether someone’s “issues” with regard to you are racially motivated, personality

driven, or an objective professional evaluation of your work or potential

- b. Nevertheless, you need to avoid negative impressions (not just overcome them) in order to get to yes

iii. SOLUTION

1. Get yourself invited to give paper talks at other schools where you have colleagues in your field
2. Attend conferences in your field
3. Get to know people in your field