

# Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas

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## I. THE CONDITION

**D**URING THE 1981-82 SCHOOL YEAR the Society of American Law Teachers ("SALT") conducted a survey of minorities in legal education.<sup>1</sup> The results of the SALT survey confirmed the worst fears of those of us who are committed to the desegregation of the law teaching profession. The most glaring fact presented by the data was that virtually none of the schools surveyed had made significant progress in the integration of its law faculty.<sup>2</sup>

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1. This article initially appeared as a statement issued by the Society of American Law Teachers ("SALT") in response to a survey of minority group persons in law teaching which the organization had conducted during the 1980-81 school year. The statement was authored by Professor Lawrence, adopted by a unanimous vote of the SALT Board, and published in the Society's newsletter. See *1984 SALT Newsletter* No. 1 (July 1984). The survey, upon which the SALT statement was based, was authored by Professor David Chambers of the University of Michigan Law School and focused on how and why law schools differed in their success in hiring, promoting, and tenuring minority faculty. See Appendix, Table 1. For more recent and comprehensive data, see Kaplan, *Hard Times for Minority Profs*, Nat. L. J., Dec. 10, 1984, at 1, col. 1 (ABA statistics for the 1983-84 academic year reveal that eight percent of the 170 accredited law schools in the United States employ roughly 40% of all minority faculty. A total of 5.6% of all full-time law faculty were minorities, compared to 5.7% in 1981-82. According to the most recent data, 34% of all ABA approved law schools had no full-time minority faculty, 31% had one, 18% had two, six percent had three, and eight percent had four or more minority faculty. In 1981-82, 37% of law school faculties had no minorities, thirty-one percent had one, 18% had two, seven percent had three, and seven percent had four or more minority faculty.)

2. This statement focuses on the problem of minority hiring and particularly on the appointments process. While women have faced similar problems in gaining access to the law teaching profession, see Kay, *Commentary: The Need for Self Imposed Quotas in Academic Employment*, 1979 WASH. U.L.Q. 137 (1979), the present positions of women and mi-

A prefatory summary of the survey results indicated that, among the ninety-two responding schools, a "typical" law school had twenty-nine faculty members of whom two were minorities. However, this conceals the fact that almost two-thirds of the schools responding had even fewer minority faculty than the "typical" (average) school. An examination of the data on the individual schools responding, contained in Table I, revealed twenty-eight schools with no minority faculty and thirty-two schools with only one.<sup>3</sup> Another twenty schools had two minority faculty members. Excluding the two historically black schools, there were only fourteen schools with more than two minorities (ten schools with three, three with four and one with five), with minorities in these schools representing from four to eleven percent of the faculty.<sup>4</sup>

It is apparent that the efforts to integrate the law teaching profession have involved an excess of deliberation and a minimum of speed. Many schools hired a token minority faculty member in response to pressure from minority students in the late sixties and early seventies. But most of the minority faculty hired during this period have remained isolated token presences on their campuses; they have assumed the multiple burdens of counselor to minority students, liaison to the minority community, and consultant on race to administration and colleagues, while working to establish themselves as effective teachers, productive scholars, and congenial colleagues.

The lack of progress in the hiring of minority faculty becomes particularly perplexing when one talks to colleagues at the law schools concerned. Invariably, one is told of a concerted effort to identify and attract minority individuals engaged in by a concerned faculty and administration. But despite these good faith efforts, the results are meager or nonexistent.

I am persuaded that, despite our best intentions, law school

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minorities are sufficiently dissimilar to merit separate treatment. Because the current data on the promotion and tenure of minority faculty present no clear pattern, I have left that discussion for another day. *See* Appendix.

3. *See* Appendix, Table 1.

4. Of the 172 schools accredited by the AALS, 95 responded to the SALT survey. There is no reason to believe that this is not a representative group with respect to the appointment of minority faculty. If there is any bias in the sample, it seems likely it is a bias that makes the picture look better than it actually is; law schools who have had a better record of hiring minorities and women are probably disproportionately represented among those that responded.

faculties will remain virtually all white unless we impose clear, unalterable obligations upon ourselves by holding designated positions open until they are filled by high caliber minority faculty. I realize that many of my colleagues will view this proposal as too extreme, arguing that any pre-established remedy entails the imposition of racial quotas and the lowering of standards.<sup>5</sup> I recognize that this is a radical remedy, but I am convinced of its necessity. The conditions and practices that led me to believe the remedy is justified are set forth below.<sup>6</sup>

## II. THE CAUSE

The virtual absence of minorities in law teaching is most often explained by reference to the small pool of eligible candidates. Every law school appointment committee maintains it would gladly hire a minority if it could only find a qualified minority candidate. The size of the applicant pool is most often attributed to the effect of disparate educational opportunities and past discrimination in the American educational system. But with the advent of affirmative admissions programs the number of minority law school graduates has increased considerably.<sup>7</sup> Further, there is a misperception that the financial allure offered by large firms to outstanding minority law graduates, many of whom find themselves in substantial debt at the end of law school, further reduces the size of the pool.<sup>8</sup> Moreover, few minorities are encouraged to

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5. See, e.g., Kaplan, *supra* note 1, reporting that several white administrators opposed the Society of American Law Teachers' recommendation of a "voluntary quota" plan on the ground that too few minorities have the credentials to teach law.

6. There will be those who will read this article and find its description overbroad in its generalizations and therefore inapplicable to our own institution in certain particulars. Our inclination will be to dismiss the statement completely or to say: "That may be true at other law schools but we are willing to hire candidates who were not on law review or who did not graduate from prestigious law schools." It is true that not every one of the hurdles to minority access to law school faculties is present in every case. But I would ask you to look at your law school's *results*. Review the details of both the formal and informal process that led to the appointments you have made in the past ten years. Ask yourself if you can honestly say that one or more of the invisible barriers described below was not directly or indirectly operative. I would urge you to read this statement not as an indictment, but as a self diagnosis.

7. In 1970 there were approximately 700 minority students in the graduating classes of ABA approved law schools. By 1983 approximately 3500 minority student were enrolled in the graduating classes of ABA approved schools. ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—(FALL 1982).

8. Although the enrollment of racial minorities in ABA approved law schools has grown

think of teaching as a viable alternative. But the dearth of minority professors is in large part a function of the faculty hiring process and the policies and practices, formal and informal, which have traditionally governed that process and continue to do so.

### III. OBSTACLES TO APPOINTMENT

#### A. *The First Hurdle: A Prestigious Preparation*

Although there are few, if any, schools with formal minimum qualifications at the entry or appointments level, there are clear, informal prerequisites to consideration at most schools. Candidates are unlikely to receive even passing consideration if they do not come adorned with the appropriate merit badges. If the faculty members have attended prestigious law schools they bring a vicarious status to the schools at which they teach. The top law schools rarely consider candidates from schools whose status is not in a league with their own.<sup>9</sup> Lesser law schools seek to increase their prestige by attracting graduates of the same top ten or fifteen schools (or those which are so perceived). This phenomenon oper-

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substantially over the past decade, minorities remain dramatically underrepresented in large law firms. According to the ABA section of Legal Education and Admission to the Bar, minority student enrollment increased from 5,520 in 1971-72 to 11,866 in 1983-84. Silas, *Business Reasons to Hire Minority Lawyers*, 70 A.B.A. J. 53, 53 (Apr. 1984). According to a recent study conducted by the *National Law Journal*, the percentage of minority lawyers in large law firms has dropped dramatically in the last several years. *Women Gaining, Blacks Fall Back*, Nat. L.J., May 21, 1984, at 1 [hereinafter cited as *Women Gaining*]. Statistics from 92 of the 100 largest firms in the nation indicate that the percentage of black lawyers declined from 2.9% in 1982 to 1.5% in 1984. *Id.* This decline is confirmed by a similar study of 25 major firms in New York which hire more than 100 associates. *Why Blacks Still Haven't Made It*, THE AM. LAW. 121 (Mar. 1984) [hereinafter cited as *Why Blacks Haven't*]. According to that study, in February, 1979, of 2000 associates 64 were black, representing 3.2% of the total. *Id.* As of February, 1984, although the total number of associates in the firms surveyed had increased to 4000, there were 94 blacks representing only 2.3% of the total. Several of the firms surveyed hire no black attorneys.

Opportunities for minorities in the partnership ranks of large firms are even more limited. The *National Law Journal* study found 51 blacks among 7805 partners. *Women Gaining, supra*, at 43. *The American Lawyer* found seven black partners in the twenty-five firms surveyed. *Why Blacks Haven't, supra*, at 121. See generally Munneke, *An Analysis of the Employment Patterns of Minority Law Graduates*, 7 BLACK L.J. 153 (1981); Smith, *Great Expectations and Dubious Results: A Pessimistic Prognosis for the Black Lawyer*, 7 BLACK L.J. 82 (1981).

9. A survey of the faculty rosters at Harvard, Yale, Michigan, Stanford, Columbia, and the University of Chicago reveals this trend. (statistics compiled from A.A.L.S. Directory of Law Teachers 1983-84).

ates to further narrow the already small group of minorities who are considered eligible for faculty positions.

### **B. *The Second Hurdle: The Top Ten Percent***

The pool gets even smaller when the requirement of having "done well" is added to that of attendance at an elite school. High class rank, a law review editorship, and a judicial clerkship or an association with a prestigious firm are the common prerequisites to serious consideration. Although many schools made exception to this rule in response to political pressure from minority constituencies, there has been a tendency to return to strict adherence once a token minority presence has been achieved.<sup>10</sup> Heavy reliance on

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	Total Faculty	Faculty from 6 Schools Surveyed	Faculty From Harvard, Yale and Own School
Harvard	95	79	68
Yale	54	42	33
Michigan	47	40	32
Stanford	44	36	28

  

	Total Faculty	Faculty from 6 Schools Surveyed	Faculty From Harvard, Yale and Own School
Columbia	52	44	43
U. of Chic.	53	30	22
Total	345	271	226

10. Derrick Bell, Professor of Law at the University of Oregon and for ten years a Professor at the Harvard Law School, has noted that the successful and even outstanding performance of minority faculty who were hired in the late sixties and early seventies has not led faculties to reassess the criteria that would have operated to exclude these faculty. He stated:

In 1969, after a dozen years of litigation and administrative experience with both private and government civil rights agencies, I became the first black on the Harvard Law School's permanent faculty. Granted tenure in 1971, I taught there for eleven years, and developed a civil rights course based on my law text, "Race, Racism, and American Law" . . . .

My academic record, good grades and a law review editorship at the University of Pittsburgh Law School, ordinarily would not have gained much consideration for a faculty position at Harvard, where qualifications include extraordinary grades from Harvard or another major law school, a clerkship on the U.S. Supreme Court, and perhaps a few years at one of the country's prestigious law firms . . . . There is a strong presumption that applicants with credentials of this character have teaching and scholarly potential. Because there are no longer any overt racial barriers at Harvard, some faculty believe it is as wrong to consider race as a positive qualification in hiring teachers . . . . My efforts at Harvard to recruit more blacks with backgrounds similar to mine were

law school performance has an additional indirect exclusionary impact. It results in relatively little weight being given to an applicant's performance subsequent to law school. Excellence in law practice or another teaching position would seem of special relevance in assessing a candidate's potential, but when top grades in law school are required before the candidate is seriously considered, the quality of more recent manifestations of ability is more often than not disregarded.<sup>11</sup> The impact on minorities, who have blossomed later in their careers because they came to law school less well prepared or found the law school experience alienating or irrelevant, is particularly severe.<sup>12</sup>

Ironically, with the steadily increasing competitiveness of the teaching market, in many non-prestige schools, where white male professors of an earlier vintage were not required to have proven themselves the brightest of the bright, hiring standards have been raised, and minority candidates must clear hurdles that did not exist for their more senior colleagues.

It does not seem to matter that there has been no effort, much less a successful effort, to establish a relationship between law school grades and outstanding teaching or scholarship.<sup>13</sup> We have not required of ourselves the stricter standards of job validity we

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stymied by faculty who preferred to wait for applicants with academic credentials like their own, but who just happened to be black.

75 HARVARD LAW RECORD No. 2, at 14 (Sept. 17, 1982).

11. A white male applicant who recently applied for a teaching position at a prestigious national law school had graduated from Harvard Law School in the early 1970's. Subsequently, he had proven himself a skilled lawyer and an outstanding teacher and had published several articles. Faculty members who opposed his hiring argued that he did not have the academic credentials to teach in their law school because he had only ranked 35th in his graduating class of more than 450 students.

12. The scenario in footnote 8 is repeated in another law school of considerably less prestige. This time the candidate is black. A graduate of Stanford University and Harvard Law School, he has developed a fine reputation as a practitioner and, without the benefit of time and support provided by academia, has published two thoughtful articles. Questions are raised about his solid, but not outstanding, academic record at Harvard. His recent publications and uniformly laudatory references from colleagues in both practice and teaching are virtually ignored. The faculty is deadlocked and he has not been offered the job.

13. It is no doubt true that the vast majority of the nation's leading scholars did well as students. But there are at least an equal number of top law students who have proved disappointing as both teachers and scholars. There is also an obvious element of self-fulfilling prophecy in the process by which those who perform well on first year exams become law teachers. And there is little, if any, evidence available to determine whether we would do as well or better if alternative criteria were used in selecting law teachers.

have imposed on police and fire departments.<sup>14</sup>

### C. *The Third Hurdle: The Old Boy Network*

Where the initial prerequisites have been met the candidate for a law teaching position is evaluated against the competition. Low growth, an increasing number of fully tenured faculties, and the elimination of compulsory retirement have made law teaching more of a buyer's market than ever before. Appointments committees faced with hundreds of candidates rely heavily upon personal evaluations to make their final choice.

When all is said and done, the chair of the appointments committee gets on the phone and calls a friend on the faculty where the candidate was a student or in the firm where he or she was employed. A senior member of a prestigious law faculty notes:

Many have voiced complaints about the "Old Boy Network," but the institutional forces that maintain it are still present: The professors, judges and senior partners who know the candidates, and whose judgment is sought out and given credence by their counterparts in other institutions, are overwhelmingly white and male. The tendency to recognize intellectual power and unusual capacity for creative scholarship more easily in persons of one's own sex and race and in persons who can be viewed most comfortably as one's protégés is perfectly natural.<sup>15</sup>

The fact that the "Old Boy Network" is alive, well, and more often than not the source of information most critical to the appointments process is news to none of us. Stripped of its pejorative label, it seems eminently reasonable to choose from among a number of outstanding candidates by seeking the personal evaluation of those we know and trust. But this heavy reliance on mutual friends and colleagues operates to exclude even those few minorities who have managed to surmount the more easily quantifiable barriers to access.<sup>16</sup> Even those minority students who have excelled academically are less likely than their white counterparts to have developed personal relationships with their white professors. And those

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14. See Bartolett, *Application of Title VII to Jobs in High Places*, 95 HARV. L. REV. 947 (1982).

15. Kay, *supra* note 2, at 140.

16. *Id.*

professors are less likely to recognize talent and intellect that does not mirror their own. Minority law professors and judges have attempted to establish an informal reference network of their own, and certain better known minority faculty are often called upon to suggest minority candidates or evaluate those being considered for appointment. But, while the opinions of minority faculty are sought out because of special insights they are likely to have about a minority candidate, those opinions are often given less weight than that of their white colleagues.<sup>17</sup> Many white faculty members find it difficult to believe that their minority colleagues are able, or willing, to rigorously assess minority candidates. The unstated assumption is that minority faculty will place their commitment to affirmative action ahead of their commitment to quality.<sup>18</sup>

#### ***D. The Fourth Hurdle: No Room at the Inn***

A final impediment to progress in the hiring of minority faculty is the small number of open positions. All but a very few law schools are facing severe budget cuts, and an increasing number of faculties have few or no tenure slots remaining. This problem is exacerbated by the tendency of law schools to hire to fill specific curricular needs. While a school may offer several different corporations or tax courses, one civil rights course is usually viewed as more than sufficient. While law schools often claim they would welcome a Puerto Rican tax professor, the financial lures of corporate practice make the minority academic with expertise in these

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17. A tenured minority faculty member at a prestigious law school tells of having given his highest recommendation in support of a minority candidate seeking a position at his school. The candidate's credentials were excellent. He had already received offers from three other top law schools but had received no communication from the school where the minority faculty member had recommended him to his colleagues in such unqualified terms. When the faculty member sought an explanation for his school's failure to approach the candidate, he was told that a white partner at a firm where the candidate had previously been employed had given him a less than superlative rating, and that the committee had decided not to pursue the candidate any further.

18. In fact minority faculty are likely to be both more perceptive about what individuals will perform well in the academic setting and more rigorous in their evaluation of these individuals' potential for superior performance as teachers and scholars. Minorities who have survived the trial by fire of racial barrier-breaking in legal academia are best able to recognize the strengths and weaknesses that predict success or portend failure. Moreover, minority faculty are fully aware that both their own reputations and that of the group with which they are identified are on the line. The new black appointment who does not work out will be counted as something against the case for affirmative action.



areas a particularly rare specimen.<sup>19</sup>

#### IV. SOME GOOD ALTERNATIVES—BUT ONES THAT DO NOT WORK BY THEMSELVES

Many law schools have made good faith efforts to identify and hire minorities by exploring alternatives to the traditional ways in which faculty have been recruited and selected. The recruitment net can be cast more widely by aggressively seeking candidates not just from clerkships and prestige firms, but from all segments of the bar. Good minority students can be actively encouraged to pursue a teaching career while they are still in law school, even when they are not the top students. More weight can be given to professional performance after law school that indicates potential for success as a teacher and scholar. Good teachers can be hired without reference to curricular needs and these needs can be met by reassignment within existing faculty. The advice and recommendations of minority colleagues can be sought out and relied upon. We can reexamine our notions of what constitutes important, quality scholarship, encouraging diversity of perspective and style as well as diversity in skin color.

But even when we have made an effort to pursue some or all of these alternatives our results have been negligible. Invariably, the "outstanding" white candidate presents himself as the candidate who has matched or outdistanced us in the things we think matter and hold dear. We are likely to see this as an opportunity which cannot be missed. The pursuit of our new alternatives must await another day.<sup>20</sup>

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19. Discrimination in hiring by large established corporate law firms has made the pool of minorities with expertise and experience in business and corporate areas of the law especially small. See authorities cited *supra* note 7; see generally Bartolett, *supra* note 13.

20. There are a small number of law schools which have recognized the tendency to postpone the appointment of minority scholars when the inevitable "star" candidate becomes available and therefore imposed an informal freeze on appointments until minority recruitment efforts bore fruit. These faculties have been both startled and pleased at their success once they committed themselves to this course of action. At one well-known law school, the appointments committee "found" two minority candidates, to whom the faculty voted offers, after the dean informed the committee that it must produce some minority candidates during that recruiting season. What is most important about this example is that the minority faculty member who was hired as a result of the dean's ultimatum (one of the two declined the offer) lacked the standard credentials but has proven a valuable asset to the school, beyond even supporters' expectations.

## V. THE PRESCRIPTION

The continued segregated status of law faculties is not caused by intentional or conscious racially discriminatory choices. It is the result of policies, practices, and values that are an integral part of the "normal" recruitment and appointments process. Individual faculty members are able to assert honestly their good intentions while continuing to make choices based on "neutral" criteria which have an inevitable exclusionary impact. This is the substance of institutional discrimination, a malady that can only be cured by institutional reform. The most efficacious institutional policy for achieving faculty desegregation entails giving highest priority to filling a substantial number of positions with minority appointments and holding these positions open until vigorous recruitment, combined with an equally rigorous selection process, results in a minority appointment. Only by making an institutional choice to designate existing slots for minority candidates will faculties free themselves from the constraints of institutionalized practices and internalized preconceptions that perpetuate discrimination without advancing the quality of our law schools.<sup>21</sup>

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21. See Kay, *supra* note 2, at 145.

# Appendix

## SALT SURVEY

### MINORITY GROUP PERSONS IN LAW SCHOOL TEACHING

by *David Chambers*

*University of Michigan Law School*

In the summer and the fall of 1981 we sent questionnaires to faculty members<sup>1</sup> at all 172 law schools accredited by the AALS, asking questions about current numbers of minority group members and women on their faculties and about numbers of offers made and offers accepted, tenure decisions and denials, and resignations. Our principal goal was to measure the progress that has been achieved in adding minorities and women to law faculties.

Faculty members at 96 law schools responded to our questionnaire after follow-up letters in the winter of 1982. Table I reports the numbers of minority group members in teaching at these schools as of the end of the 1980-81 school year. We have no responses for 77 schools. Unfortunately it is probable that the schools for which we lack responses are different in some respects from the 96 for which we have data with regard to their experience in adding minorities and women. We thus really cannot claim our sample is representative.

Table 1  
MINORITIES IN LAW TEACHING IN 1981  
Persons in Tenured or Tenure-Track Positions

	Number of Black Faculty	Number of Other Racial or Ethnic Minority Faculty	Total Percentage of Minority Faculty
Akron (McDowell)	0	0	0%
Alabama	0	0	0
Arizona	0	0	0
Arkansas/Little Rock	1	0	5%
Boston University	0	0	0
Bridgeport	1	1	10%
Brooklyn	0	0	0
California/Berkeley (Boalt)	2	1	6%
California/Davis	1	0	4%
California/Hastings	2	0	4%
California/UCLA	2	2	8%

	Number of Black Faculty	Number of Other Racial or Ethnic Minority Faculty	Total Percentage of Minority Faculty
California Western	0	4	14%
Capital	1	0	4%
Case Western Reserve (Backus)	0	0	0
Chicago	0	0	0
Colorado	1	0	4%
Columbia	1	0	2%
Connecticut	1	0	3%
Cornell	1	0	4%
Creighton	0	0	0
Dayton	0	0	0
Detroit College	0	0	0%
Drake	0	2	9%
Duke	0	0	0
Emory	1	0	3%
Florida State	1	0	4%
Georgetown	3	0	6%
Golden Gate	2	1	12%
Hamline	0	0	0
Harvard	2	0	3%
Hawaii	0	1	9%
Howard	25	1	84%
Illinois	0	0	0
Chicago-Kent	0	0	0
Indiana/Bloomington	1	0	4%
Indiana/Indianapolis	0	0	0
Iowa	2	1	9%
Kansas	1	1	8%
Kentucky	1	0	4%
Lewis & Clark (Northwestern)	0	0	0
Loyola/Chicago	1	0	5%
Maine	1	0	7%
Maryland	3	1	9%
Michigan	2	0	4%
Minnesota	1	0	4%
Missouri/Columbia	0	0	0
Missouri/Kansas City	0	0	0
William Mitchell	1	0	4%
Nebraska	0	0	0
New Mexico	0	4	16%
New York/St. U Buffalo	0	0	0
New York University	2	0	3%
North Carolina	3	0	10%
North Dakota	0	0	0%
Northeastern	1	0	6%
Northern Illinois	1	0	5%
Northern Kentucky (Chase)	2	0	10%
Northwestern	2	0	5%
Nova	0	1	4%
Ohio Northern (Pettit)	0	1	5%
Ohio State	1	0	3%
Oregon	3	0	11%
Pennsylvania	2	0	6%
Franklin Pierce	0	0	0
Pittsburgh	2	1	10%
Puget Sound (Clapp)	0	0	0
Rutgers-Camden	1	0	3%
Rutgers-Newark	3	0	7%
St. Louis	1	2	10%
San Francisco	1	1	10%

	Number of Black Faculty	Number of Other Racial or Ethnic Minority Faculty	Total Percentage of Minority Faculty
Santa Clara	1	1	6%
Seton Hall	3	2	17%
Southern Illinois	1	1	10%
Southern Methodist	0	0	0
Stanford	1	1	4%
Syracuse	1	0	3%
Tennessee	0	1	3%
Texas	2	0	4%
Texas Southern (Thurgood Marshall)	16	2	82%
Tulane	1	1	8%
Utah	0	1	4%
Valparaiso	0	0	0
Villanova	0	0	0
Virginia	2	0	4%
Washburn	1	1	8%
George Washington (National)	1	0	3%
Washington Univ.	1	0	4%
Washington & Lee	1	0	5%
Wayne State	2	0	5%
West Virginia	1	0	4%
Western New England	0	0	0
Willamette	0	1	6%
William & Mary (Marshall- White)	0	0	0
Wisconsin	2	0	4%
Yale	3	0	7%
Yeshiva (Cardozo)	1	0	4%

Table 2  
Numbers of Minority Group Faculty Members  
at 94 Schools<sup>2</sup>

Number of Schools with:

		percentage
No minority members	28	30%
1 minority member	32	34%
2 minority members	20	21%
3 minority members	10	11%
4 or more minority members	4	4%
Total	94	100%

As Table 2 reveals, in 1981, 66 of the 94 law schools for which we had information had one or more minority group members on their faculties and 34 had two or more members. To many readers, these numbers will seem discouragingly low. Nonetheless, considerable progress was made during the period from 1975 to 1981.<sup>3</sup> Most of the schools that are listed in Table 2 as having one minority group faculty member in 1981 had no minority group members in

1975. Indeed several of the schools listed as having two minority group members in 1981 had none in 1975. Thus, the number of faculties with at least some minority group representation rose substantially during the period.

On the other hand, as Table 2 also reveals, as of 1981, 28 schools had no minority group members on their faculties. Very few of these 28 had had a minority member at any point during the five-year period we studied. For 24 of the 28 schools without minorities we had information about offers made during the period. Slightly more than half, 13 of 24, had made at least one offer to a minority person, but eleven schools neither had minority members nor had made any offers to minority-group members.

In our reporting so far, we have grouped together blacks and members of other minority groups. Viewed separately, their experiences are somewhat different for our purposes. Three quarters of the minority group members on law-school faculties are black. Of the 66 schools that have at least one minority member, 56 had at least one black faculty member. Twenty-eight schools have faculty members from other racial or ethnic minorities, primarily, we believe, Hispanic and Asian-American. The number of persons from other racial or ethnic minorities has doubled during the period. Most of the schools with such members are in the western part of the country.

Among minority group faculty members, there are also notable gender differences among groups. In 1975, nearly all the black members of law faculties were males. By 1981, at the assistant professor level, there were almost as many black women on the 96 faculties as black men. Today, about a quarter of all black faculty members are women, whereas only one-eighth of white faculty members are women. Among persons from other minority groups, nearly all are male.

Most persons of all races who come on to law faculties enter at the assistant professor level. Given the substantial growth in recent years in the number of minority group members on law faculties, it is not surprising that a high proportion of them still face a decision on tenure. (Over a third of all minority group members in teaching at the 90 schools are assistant professors, whereas only one-seventh of whites in teaching are assistant professors. In a similar manner, as will be discussed in the next issue, white women on law faculties today are far less likely than white males to have obtained tenured

status.)

Because of the large number of minority group members who have not yet attained tenure, much of the modest progress of the last few years in increasing the numbers of minority group members in teaching stands at risk in the tenure decisions of the next few years. How much ground there is for concern, however, is unclear. Encouraging is the fact that in the recent past (that is, during the six-year period from 1975-81 about which we inquired) there were very few decisions adverse to minorities at the schools for which we have data. In fact, in over half of our schools, there were no adverse tenure decisions of any sort against whites or minorities. At the schools for which we had information about tenure decisions, there were 46 decisions made during the period about black faculty members. Only two of these 46 decisions were adverse. The average rate of favorable decisions for blacks was fully as high as the rate of favorable decisions for whites.

That's the bright side. On the other hand, we asked on our questionnaire whether there had been any change in tenure standards in recent years. The respondent at about a third of the schools indicated that tenure standards had been generally toughened or that standards of quality or quantity of scholarship had been tightened. Given the disproportionate numbers of minority group members in untenured positions, if there is an increase in adverse tenure decisions over the next few years, the proportion of minority group members on faculties may decline, even assuming that an identical proportion of blacks and whites are granted tenure.

People leave law teaching positions for reasons other than denial of tenure. Many minority group persons who have come into teaching have left the reporting schools and the rate at which minority faculty have left is higher than it is for white faculty persons. On the other hand, movement is higher in general for untenured than tenured people and minority persons are concentrated in untenured positions. Thus, at least on our preliminary analysis, there does not seem to be a substantially higher rate of leaving teaching or moving to other schools among untenured minority members than there is for untenured white members.

<sup>1</sup>Information for the survey was collected by faculty members (typically SALT members) at each institution and is not the "official"

response of the institution.

<sup>2</sup>For the rest of this report, we are reporting primarily on 90 of the 96 schools. For most purposes in our analysis we have excluded Howard and Texas Southern because our principal purpose in this survey was to measure the progress in adding minority teachers to previously all-white faculties.

<sup>3</sup>For the rest of this report, we are reporting primarily on 90 of the 96 schools. For most purposes in our analysis we have excluded Howard and Texas Southern for reasons explained in the preceding footnote. Four other schools are excluded, the information for which arrived in time to be included in Table 1 but not in time for inclusion in the rest of the analysis.