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TIME FOR EVERY PURPOSE UNDER THE HEAVEN: SERVICE—THE NATIONAL BAR ASSOCIATION MODEL

BEVERLY McQUEARY SMITH*

Law school faculties and administrations articulate a position that community service constitutes one part of the triumvirate of things new law school faculty members must do to be promoted and to obtain tenure. Nonetheless, the extent to which law school faculty members should participate in community service and whether such service will be considered in the tenure and promotion process remains controversial. Data suggest that if a law school wants to grant tenure to a candidate, the school will grant tenure. Similarly, if a law school wants to deny tenure to someone, earlier candidates' strengths become this candidate's weaknesses. Thus, the community service of Professor X receives accolades because the administration wishes to give him tenure. Later, Professor Z's equivalent community service is criticized on the grounds that Professor Z really cannot do all of those outside activities and still be prepared for class, produce quality scholarship, or adequately contribute to faculty governance. While faculty members' supporters can use the level of their candidate's community service to argue for them and the candidate's opponents can use it against them, community service brings its own rewards and frustrations. This paper argues that community service enriches faculty members' teaching and scholarship and serves to keep minority law professors rooted in the broader legal community which contains jurists of color. This paper contains two parts. One discusses the rules which authorize service, the other describes some of the activities of the Law Professors' Division of the National Bar Association.

PART ONE

The genesis of the service requirement for law school faculty members springs from the *Policy Documents and Reports* of The American

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Association of University Professors (AAUP).¹ In 1940, the AAUP adopted its *Statement of Principles on Academic Freedom and Tenure*.² Paragraph (c) of the section on Academic Freedom provides:

The college or university teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he or she speaks or writes as a citizen, he or she should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As a person of learning and as an educational officer, one should remember that the public may judge their profession and institution by their utterances. Hence, one should at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not an institutional spokesperson.³

In 1946, the Association of American Law Schools (AALS), to which many accredited law schools belong, officially endorsed the AAUP's *1940 Statement of Principles of Academic Freedom and Tenure*.⁴ The American Bar Association (ABA), the nationally recognized accrediting agency for law schools,⁵ in its *Standards for the Approval of Law Schools*⁶ requires that law school faculty possess a high degree of competence. Competence is demonstrated by education, classroom teaching ability, experience in teaching or practice and scholarly research and writing. Further, the ABA mandates that "[e]ach law school should have established policies with respect to faculty members' responsibilities in teaching, scholarship, service to the law school community and professional activities outside the law school."⁷ ABA Standards 402(b) and 404(c) circumvent faculty members' service commitments. Standard 402(b) provides:

(b) A full-time faculty member is one who during the academic year devotes substantially all working time to teaching and legal scholarship, has no outside office or business activities and whose outside

1. THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, POLICY DOCUMENTS AND REPORTS (1984).

2. *Id.* at 3.

3. *Id.* at 3.

4. *Id.* at 3.

5. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, THE AMERICAN BAR ASSOCIATION'S ROLE IN THE LAW SCHOOL ACCREDITATION PROCESS (1981) [hereinafter LAW SCHOOL ACCREDITATION PROCESS].

6. *See generally*, AMERICAN BAR ASSOCIATION, STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (1981) [hereinafter ABA STANDARD].

7. LAW SCHOOL ACCREDITATION PROCESS, *supra* note 5, at 3. *See also*, ABA STANDARD, *supra* note 6, at 405(d) ("The law school shall have an established and announced policy with respect to academic freedom and tenure of which Annex I herein is an example but is not obligatory."). One finds the identical language of the AAUP *1940 Statement of Principles* in the last paragraph of a section captioned "Academic Freedom" of Annex I.

professional activities, if any, are limited to those which relate to major academic interests or enrich the faculty member's capacity as scholar and teacher, or are of service to the public generally, and do not unduly interfere with one's responsibilities as a faculty member.⁸

ABA Standard 404(c) states: "If the institutional responsibilities of a full-time faculty member include extensive participation in activities of the academic community, research, or public service, the maximum assignments permitted by this section shall be correspondingly adjusted."⁹

Given the ABA requirement that all schools have policies which govern the extent of faculty members' outside activities, faculty members who aspire toward increased activity in community service should obtain copies of their school's written policies governing promotion and tenure to determine the weight the school will accord the activities. Novice law school faculty members should also inquire about any unwritten policies or practices. Pre-tenure community service involvement, without a clear agreement about its value to the institution, may adversely impact the member's scholarship and number of articles published. Post-tenure community service may result in a law school's administration penalizing faculty members with small or nonexistent salary increases or onerous class schedules to thwart their interest in outside activities.

Short of a confrontation with the law school administration about the value of public or community service, a fledgling law professor can measure the extent senior, tenured faculty members participate in outside activities. If tenured faculty members participate in community service and are accorded respect for their efforts, one can usually surmise that the law school values these activities.

While, at time of appointment, new faculty members could seek from deans and faculty members a commitment to have their community service count in the tenure process, those parties to the agreement may leave the institution or suffer a species of amnesia when the tenure application comes under consideration. Nonetheless, faculty members who elect to engage in outside service can choose from a panoply of activities.

PART TWO

The National Bar Association is the oldest professional association for African-American jurists in the United States. Recently, the Association added the Law Professors' Division. As presently organized, the division has two co-chairs and one secretary. To assure a balanced per-

8. ABA STANDARD 402(b). *See also*, ASSOCIATION OF AMERICAN LAW SCHOOLS, ASSOCIATION HANDBOOK, Section 6-5 (f) Faculty, 22-23 (1990).

9. ABA STANDARD, *supra* note 6, at 404(c).

spective, one co-chair is a law school administrator, and the other is a law school professor. Each co-chair serves a two-year term to promote continuity.

The Law Professors' Division must be represented at each meeting of the National Bar Association's Board of Governors. The Board of Governors' meetings are held three times a year in various cities throughout the country. The Law Professors' Division can cast one vote at each meeting. Although both co-chairs can attend the board meetings, often only one co-chair casts a vote on the division's behalf. In addition to these three meetings, the division must sponsor at least one continuing legal education seminar a year, submit written activity reports before each board meeting, recruit members, attend the Annual Gertrude Rush Awards Dinner, and write a column for the *National Bar Association Magazine*.

Recently, the Law Professors' Division drafted a resolution calling for an investigation of the William Mitchell Law School's actions against a member of the division. The division also spearheaded the passage of resolutions recognizing the appointment of African-American law school deans at two historically white institutions—Loyola University-New Orleans and University of Wisconsin. Additionally, the division drafted a resolution in support of Professor Derrick Bell of Harvard Law School, a division member. The National Bar Association adopted all of the resolutions proposed by the division within the past year.

Last year, the National Bar Association Task Force on Law School Accreditation was initiated. Both co-chairs of the Law Professors' Division serve on the task force. The task force's mission is to identify law schools that do not promote diversity in the legal profession and to ensure that under-served populations have access to legal representation under the ABA Standards.

As a recently formed division of the National Bar Association, the Law Professors' Division has no financial resources to defray the co-chairs' expenses or to subsidize its activities and programs. Consequently, division members must pay their own expenses or seek reimbursement from their law schools. To support a co-chair of the Law Professors' Division, a law school should consider a reimbursement request. Alternatively, the law school should adjust a faculty members teaching schedule to allow the member more time to participate in the activities and programs.

Membership in the Law Professors' Division of the National Bar Association provides fledgling legal scholars with a forum to present papers and obtain comments from senior colleagues who serve as mentors. Additionally, membership in the division makes it possible to gain insights about the legal academy from survivors of the academic jungle. For instance, many former and current law school deans regularly attend division meetings. The opportunity to chat informally with them is

invaluable to the new law professor. Moreover, when applying for tenure, a faculty member who has been active in the division can circulate articles to division colleagues who may be more able to assess the merits of another minority professor's legal scholarship. Finally, the Board of Governors of the National Bar Association remains one of the hardest working governing bodies that assists and represents under-served populations.

In conclusion, after assessing how one's law school is likely to evaluate participation in outside activities, an African-American law professor should elect to join at least one organization with roots in the community of legal scholars of color. That taproot of membership may become the law professor's sustaining force when the vagaries of law school administrations try to beat the budding minority law professor into the ground.

