Life After Tenure: Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?

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Introduction

THE QUESTION DISCUSSED in this Article is familiar to many minority law professors.[1] Even minority law professors who never heard of C. Clyde Ferguson, Jr., will be moved intellectually, if not emotionally, by the question broached in this Article: can a tenured minority law professor who, like his or her white counterpart, has supposedly reached a kind of professional nirvana, effectively manage the special conditions of academic life that can prematurely terminate life? Many of the special, potentially fatal conditions of which I speak are illustrated in Clyde Ferguson's relatively short life.

Professor Ferguson died on December 21, 1983, in Cambridge, Massachusetts.[2] He was fifty-nine years old and a tenured member of the Harvard Law School faculty. At the time of his death, and for some years prior to that time, he was the only full-time minority professor at that law school. Officially, he died of a heart attack.[3] But as Professor Derrick Bell, a former Harvard colleague of Professor Ferguson, has felicitously remarked, "[I]n our hearts many of us know that the tragedy in Clyde Ferguson's life that perhaps hastened his death was his constant conflict with racial

1. By "minority," I mean individuals who belong to groups that have experienced racial subordination in this country.

2. *In Memoriam: C. Clyde Ferguson, Jr.*, 97 HARV. L. REV. 1253, 1258 (1984).

3. *Id.* at 1253.

timing decreed not by God but by his fellow men."[4]

Like Clyde Ferguson, many tenured minority law professors find academic society to be at odds with the conditions of their professional existence. On the one hand, many of them lead a professional life that is celebrated but enslaved—celebrated for their professional achievements but enslaved by what those achievements are deemed to symbolize. Because of this symbolism, a myriad of demands are placed upon their professional lives the likes of which their white counterparts do not and, because they are not so symbolized, cannot experience. Tenured minority law professors are pulled, twisted, and stretched in all directions by these demands. On the other hand, they stand alone in an environment that offers token support and frequent antagonism. They are depersonalized, sometimes dehumanized, and potentially bent out of shape by a law faculty and administration that too often gives low priority to their concerns.

Tenured minority law professors, like their white counterparts, are obliged to engage in full-time teaching, scholarship, and committee work.[5] But unlike their white counterparts, they face certain professional events (which some might call "special burdens") that can make for a stressful life, both personal and professional. Among these are the following.

I. PROFESSIONAL BURDENS

A. *White Students*

Some white students have a tremendously difficult time dealing with a minority law professor, especially one who possesses identifiable cultural trappings—a black law professor who wears an "afro" hairstyle, a Chicano law professor whose speech reveals traces of a Spanish accent, a Chinese law professor whose appearance is unmistakably Oriental. Face to face for possibly the first time in their lives with a minority person in a position of authority, some white students apparently do not know how seriously to take this person. Consciously or unconsciously, they may wonder whether to act upon stereotypical assumptions about minorities

4. *Id.* at 1267 (quoting Bell, *A Tragedy of Timing*, 19 HARV. C.R.-C.L.L. REV. 277, 279 (1984)).

5. *See, e.g.*, Brooks, *Affirmative Action in Law Teaching*, 14 COLUM. HUM. RTS. L. REV. 15, 32 (1982).

and, in playing the role of the tough, no-nonsense lawyer they hope to become, challenge the minority's right to teach in a white institution. They may wonder whether to believe what their eyes tell them: here is an individual of considerable achievement and intellect who stands before the class as a worthy role model for all students. Unfortunately, this "dilemma" is frequently resolved along the former lines. Consequently, the intellectual deference afforded to minority law professors (especially in first-year courses) is usually less than that afforded to white male law professors.[6]

Where this situation is resolved in favor of the minority law professor, it is not always done so without cost to the latter. The confused student may have consumed hours of office time "checking out" the minority professor—poking, probing, and prying like a prospective buyer evaluating the purchase of a piece of chattel.

B. *Minority Students*

If minority students burden the lives of tenured minority law professors, they ordinarily do so out of necessity. Many minority students simply feel that there is no one else on the faculty who can understand their problems or who really cares about resolving them. Some minority students demand that their minority professors take a more aggressive stance toward minority matters. Others see their minority professors as a symbol of minority achievement and the embodiment of their own personal aspirations. Whatever the reason, minority law professors are called upon to deal with a wide range of often complex problems that beset minority students, the resolutions of which are typically beyond the former's limited resources.[7]

C. *White Peers*

Perhaps it is an understatement to say that life after tenure truly would be nirvana if it were not for the presence of a few white colleagues on the faculty. At heart, most white law professors appear to be indifferent to minority matters. When pushed, this indifference can turn to antagonism. What is worse, some white

6. *In Memoriam: C. Clyde Ferguson, Jr.*, *supra* note 2, at 1265.

7. One minority law professor has calculated that the amount of time he spent in one academic year and part of the summer months dealing with problems of minority law students was equivalent to the amount of time it has taken him to write a law review article.

law professors appear to have an anti-minority mindset. They seem set to render a negative assessment of any minority performance; they never seem to have anything positive to say about the parade of minority candidates who never make it through the appointments process. These persons are intellectually and emotionally small. They lack a largeness of spirit, which makes them incapable of showing magnanimity toward many and least of all toward the less fortunate. A long walk in the woods with these individuals discloses their shallowness and insecurity. A cursory review of their professional records, their teaching, and their scholarship reveals why they are shallow and insecure—they are but marginal white males. Dealing with this small group of individuals year in and year out is one big headache for which no amount of salary can adequately compensate.[8]

D. *Law School Administration*

Too often, deans give only token support to minority law professors. Deans must realize that minority law professors, because they *are* a numerical minority on the faculty, are ill-equipped to play institutional politics when it comes to minority affairs. Like the Supreme Court enforcing the Bill of Rights, deans must take affirmative steps to protect minority interests from unrestrained majoritarianism. When the dean is not up to this task or, worse, is antagonistic, there is often little life after tenure for the minority law professor.

E. *Minority Community Organizations*

Given the fact that most law schools are in or near minority communities and that minority professionals are looked upon as role models by both individuals and groups within these communities, community leaders naturally seek out minority law professors on a variety of minority issues. In between the endless rounds of meetings and individual conferences, minority law professors are called upon to do a great deal of organizing and leg-work. Even though this takes away large chunks of their time, it is necessary work because, inter alia, it helps to fulfill the *law school's* obligation to the community of which it is a part.[9] It also helps minority law professors to do what they can for what Judge Higginbotham calls "The Cause"—i.e., the struggle for racial justice.[10]

8. Those white law professors who are perceptive enough to pick up this problem sometimes offer welcome support to their minority colleagues.

F. *Black Underclass*

Black tenured law professors may have the unique burden, one not necessarily shared by white law professors or even by other minority law professors, of applying their analytical skills to the problems of the black underclass[11] or addressing issues of special interest to black Americans.[12] Although blacks, of themselves, are not responsible for the development of the black underclass (which hopefully will not become a permanent social stratum) or for many of the special problems that beset black Americans, the black middle class, of which black law professors are a part, may be in the best position to speak on behalf of the black underclass and to black problems in general.[13] The element of racial kinship may place the entire black middle class in this position, a position which may accrue to middle-class blacks by necessity or default. As the great black civil rights lawyer Charles Hamilton Houston[14] has stated, "It [is] unrealistic to expect white lawyers to help destroy a system from which they themselves benefited."[15] And in the words of Judge Wyzanski, "To leave non-whites at the mercy of whites in the presentation of non-white claims which are admit-

9. For further discussion of this proposition, see *Brooks, supra* note 5, at 40.

10. On April 24, 1982, a conference of black alumni of Yale Law School addressed this question. This distinguished gathering was admonished by Judge A. Leon Higginbotham of the Third Circuit to remember their commitment to the struggle for racial equality and the black underclass. *See generally* Lord & Smith, *The New Black Lawyer As Community Builder*, BALSA REPORTS 11 (Winter 1981-82).

11. Over one-third of all blacks currently live in poverty. *See, e.g.*, CENTER ON BUDGET AND POLICY PRIORITIES, FALLING BEHIND: A REPORT ON HOW BLACKS HAVE FARED UNDER THE REAGAN POLICIES 4 (1984).

12. Such issues include not only white racism and black subordination but also black-on-black crime, black illiteracy, illegitimate births, and even the question of the precise relationship between middle-class and underclass blacks in the emerging black self-help programs. *See infra* note 16.

13. Of course, this does not necessarily mean that the black middle-class is in the best position to do everything that is needed to be or can be done to help the black underclass.

14. Houston, one of the first black editors of the *Harvard Law Review*, was the chief legal strategist in the NAACP's successful challenge to state-imposed segregation that culminated in Brown v. Board of Educ., 347 U.S. 483 (1954). He was also a dean of Howard Law School. *See, e.g.*, G. WARE, WILLIAM HASTIE: GRACE UNDER PRESSURE 44-45 (1984).

15. G. WARE, *supra* note 14, at 29, 45.

tedly adverse to the whites would be a mockery of democracy."[16]

II. MANAGING THE BURDENS

How can tenured minority law professors manage these burdens without endangering their health or their lives? Basically, the law school environment must be made more supportive of tenured minority professors. This does not simply mean that law schools must increase hiring of minority faculty.[17] Whether through or independent of affirmative action, it does minority law professors no good to be brought aboard a ship destined to sail in unfriendly waters. Rather, the ship must rechart its course. Without redirection, even a significant change in the hue of the faculty may produce only an unsupportive, largely *minority* environment, perhaps merely duplicating the problems (including those created by self-hate)[18] experienced by some black scholars at some predominantly black universities.[19]

If the law school environment is to become more supportive of tenured minority law professors, at least two conditions must be met—one external and the other internal. The external condition is really threefold. First, the dean of the law school must be willing to deal effectively with those environmental elements that may

16. Western Addition Community Org. v. NLRB, 485 F.2d 917, 940 (D.C. Cir. 1973) (Wyzanski, J., dissenting), *rev'd*, 420 U.S. 50 (1975). Whether this means that middle-class blacks are *obligated* to work with underclass blacks is a question I leave for another day. Hamilton certainly felt that an obligated relationship exists, at least as between black lawyers and black society. As one of his former students has stated, "He kept hammering at us all those years that, as lawyers, we had to be social engineers or else we were parasites." G. WARE, *supra* note 14, at 45.

17. There are other important reasons why minority hiring should be increased. *See, e.g.*, Brooks, *supra* note 5, at 35-38.

18. Too often minorities, like any oppressed group, adopt the dominant group's negative attitudes toward them. *See, e.g.*, G. ALLPORT, THE NATURE OF PREJUDICE 150-53 (1979); A. ROSE, THE NEGRO'S MORALE 85-95 (1949); G. SIMPSON & M. YINGER, RACIAL AND CULTURAL MINORITIES: AN ANALYSIS OF PREJUDICE AND DISCRIMINATION 192-95, 227, 295 (4th ed. 1972). *Cf.* Brown v. Board of Educ., 347 U.S. 483, 494 & n. 11 (1954) (*de jure* segregation has a negative impact on the black person's sense of self). Middle-class blacks who have gained a measure of economic success and, hence, some acceptability among the dominant group, sometimes adopt such an attitude with particular frequency. *See, e.g.*, E. FRAZIER, BLACK BOURGEOISIE 213-16 (1957); A. KARDINER & L. OVESEY, THE MARK OF OPPRESSION 313-16 (1962); G. SIMPSON & M. YINGER, *supra*, at 209; Lewin, *Self-Hatred Among Jews*, 4 CONTEMP. JEWISH REC. 219 (1941).

19. *See, e.g.*, K. MANNING, BLACK APOLLO OF SCIENCE: THE LIFE OF ERNEST EVERETT JUST 329 (1983).

make the law school appear to be caught in a racial time-warp—where racism begets serious discrimination or even physical violence. The dean must use the power of his or her office, however small it might be at some law schools, to deal with any faculty member who, in the guise of academic freedom, has acquired the nasty habit of making racist remarks in class or in faculty or committee meetings; to elevate the low institutional esteem too often given to minority scholarship focusing on civil rights law (pejoratively called "race law"); to adjust the low salary that tenured minority law professors frequently receive in relation to that of their white counterparts, some of whom are demonstrably less productive than their minority colleagues; and to challenge those white students who seem bent on unceremoniously questioning the right of a minority to teach in a predominantly white institution. Second, the minority law professor must be given some relief from committee assignments so as to have more time to pursue legitimate obligations or interests regarding the minority community or minority law students. Third, minority law professors must spend time away from the law school, students, and community groups. A study at home, a public library, or a place of relative tranquility where one can write, collect his thoughts, or simply gather herself together before going back into battle may be essential to emotional and physical health.

Perhaps more important (and certainly more difficult to nurture) than the external condition is the internal one: racial sensibility. If Elie Wiesel, Professor of Humanities at Boston University, is correct when he says that the Holocaust has made American Jews a "traumatized people," then societal discrimination in this country has similarly traumatized American minorities. This is particularly the case with black Americans, many of whom have developed a keenly impressionable nature as a result of the legacy of slavery and Jim Crow. Jews and other minorities were not *legally* enslaved, segregated, and discriminated against by this society;[20] they in fact came to America eager to accept the dominant group's behavioral patterns and value systems—the rules of the game, as it were—while simultaneously benefiting from a support system within their own ethnic enclave. Blacks, having been involuntarily imported as slaves; having suffered the forced separation

20. *See, e.g.*, Brooks, *supra* note 5, at 42-45.

from family, customs, and traditions; and having worn the badges of second-class citizenship for so long, have faced a loss of identity and have been left with mixed emotions about their status in this country. There are indelible feelings of humiliation, guilt, anger, and defiance, but there is also a strong desire to excel within the existing system. Unfortunately, performance is often hampered by negative feelings, which would be true for any group that had been saddled with centuries of oppression by the dominant group.[21]

Somehow, minority law professors must—as must all minorities—learn to deal with the psychological problem of being a minority in this society. They must fight racial sensibility. They must try to put the haunting legacy of racial subordination behind them and learn a new, more self-supportive way of dealing with the pockets of racism that still exist. Toward that end, I make the following suggestions.

(1) Minority law professors should learn that on the one hand they have the right to be angry about centuries of racial exploitation and present-day racism, but on the other hand, they do not have the right to feel guilty about these matters, to suffer low self-esteem, or to react in other self-destructive ways. They must realize that racism is a by-product of another person's or institution's insecurity, inadequacy, and self-doubt. Viewed in this manner, a racist remark, for example, should be treated instinctively as a momentary annoyance, like a stupid remark made by any empty-head.

(2) To build self-assurance, minority law professors should try to accumulate personal successes, big or little, and create positive events in their individual professional lives.

(3) It is important to build a "support system." Such a system might consist of minority law professors within the law school or university or of caring white colleagues who understand the burdens of being a minority law professor at a predominantly white law school.

(4) Finally, minority law professors should accept who they

21. This is the central teaching of the now classic documentary on racism, "A Class Divided," in which Jane Eliot, a third-grade teacher, showed how dividing a class into blue-eyed and brown-eyed children and discriminating against one group in favor of the other affected the test scores of both groups. The oppressed group performed poorly, but the dominant group performed well. The results were precisely opposite when the two groups switched roles.

are. They, like all minorities, should not force themselves into a predetermined, societally-created racial mold. A black law professor should resolve any incipient or ongoing "identity crisis" not in favor of a "black" or "white" self, but in favor of the *individual* self defined by personal likes and dislikes.

Conclusion

Without question, life after tenure for a minority law professor is typically different from that of a white law professor. Unlike his or her white colleague, the minority law professor must shoulder certain professional burdens. These burdens mainly entail the tasks of dealing with students (white and minority), white colleagues, the law school administration, minority community organizations, and, for black law professors, the black underclass. Collectively, they contribute to the unique professional life of the tenured minority law professor. As Clyde Ferguson's life tragically illustrates, these burdens can adversely affect not only the quality of life after tenure, but also the length of post-tenure life.

Fortunately, there is much that can be done toward effective management of the professional burdens. The dean of the law school should take specific managerial action to make the law school environment more supportive of minority law professors. Most importantly, the minority law professor should strive to build a system of support within his or her professional environment as well as learn how to fight racial sensibility.