

ROBUST EXCHANGE OF IDEAS AND THE PRESENCE OF THE AFRICAN AMERICAN VOICE IN THE LAW SCHOOL ENVIRONMENT: A REVIEW OF LITERATURE

By
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People of color represent about 30% of the United States population, but less than 10% of lawyers.¹ African-Americans represent approximately 13% of the United States population, but only 6.8% of enrolled law students.² The rate of admission of African-Americans to law schools has experienced a continual decline, diminishing the racial diversity of the law student body and the legal profession.³

The primary purpose of this literature review is to explore the research related to the enrollment of African-American students in law school, the effects of low enrollment on law school culture, and the evidence of successful initiatives that have increased the number of African-Americans admitted to law school. The search strategy explored the following key search terms: racism, law school, law-study and teaching, law social aspects and African-American law students. The search yielded 23 articles, 1 newspaper article and 1 book.

In the first section, I describe the historical and current statistics related to low enrollment and I provide research related to the underlying reasons for the past and current enrollment trends. In the second section, I examine the impact of low enrollment on the law school environment and classroom dynamics. The final section provides a summary of methods used to increase the enrollment of African-Americans in law school, focusing specifically on replenishing the pipeline of competitive applicants and removing barriers in the law school admission process.

HISTORICAL RATES OF AFRICAN-AMERICAN ENROLLMENT IN LAW SCHOOLS

Segregationist policies in legal education were enforced from 1896 to the enactment of the Civil Rights Act of 1964.⁴ These policies created a barrier for African-Americans who sought to pursue a law degree and enter the legal profession.⁵ Law schools were impacted by the doctrine of “separate but equal” that was adopted in *Plessy v. Ferguson*,⁶ which required separate White and Colored race designations in public institutions and accommodations, including law schools. This doctrine directly impacted the enrollment opportunities available for African-Americans to enter law school and later practice law. In order to create access to the legal profession, litigation was necessary.⁷ For example, in the case of *Murray v. University of Maryland*,⁸ the State of Maryland was not able to provide a “separate but equal” law school for African-Americans. As a result of subsequent litigation, they were required to admit an African-American male,

Donald Murray. Simultaneously, “Blacks only” law schools were created to offer alternative opportunities for African-American applicants.⁹

One such example was the establishment of Howard Law School.¹⁰ The training at Howard Law School focused on effectuating social change by dismantling racial segregation and defeating Jim Crow laws. For instance, on January 26, 1947, civil rights leaders met to brainstorm ideas and strategically plan for ending racially restrictive covenants. Those in attendance included Howard alumni who had become civil rights pioneers, like William Hastie, Thurgood Marshall, Spottswood Robinson, and James Nabrit. Howard alumnus Justice Thurgood Marshall also served as counsel of the landmark court case *Brown v. Board of Education*, which overturned *Plessy v. Ferguson* by holding that separate educational facilities are inherently unequal.¹¹

Although admission to law school is no longer limited by the “separate but equal” doctrine, these historical barriers have had a lingering effect.¹² Presently, there are still a relatively low number of African-Americans admitted into law school and practicing law.¹³ In recent years there has been a decline in the rate of enrollment of African-American law school applicants, down 8.6% since 1992.¹⁴ The American Bar Association (“ABA”) Commission on Racial and Ethnic Diversity has found that advances for people of color in the legal profession have stalled.¹⁵ The 2000 ABA-sponsored Miles to Go report illustrates that there is still progress to be made. The report notes: “The legal profession—already one of the least integrated professions in the country—threatens to become even less representative of the citizens and society it serves.”¹⁶

Law schools have voluntarily used affirmative action initiatives to address the declining enrollment of people of color and promote racial diversity.¹⁷ Justice Marshall in *Bakke v. Regents of University of California*,¹⁸ expressed the importance of using race as a consideration in admission due to the historical barriers that restricted African-Americans from pursuing opportunities in higher education. Justice Marshall referred to affirmative action plans as a method of remedying over 200 years in which the Constitution did not prohibit the most “ingenious and pervasive” forms of racial discrimination.¹⁹ The University of Michigan Law School has used race as a plus factor in its admission process to promote racial diversity. In *Grutter v. Bollinger*,²⁰ the University of Michigan Law School’s practice passed muster of the Fourteenth Amendment’s Equal Protection clause. The Court held that the plan was narrowly tailored to derive the educational benefits

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of diversity.²¹ These educational benefits included the creation of a multicultural environment.

IMPACTS OF LOW ENROLLMENT ON LAW SCHOOL CULTURES

In *Grutter v. Bollinger*, the United States Supreme Court recognized that diversity of the law student body is essential to create the most “robust exchange of ideas.”²² Many benefits will be derived through this “robust exchange of ideas,” including: promoting cross cultural understanding, helping breakdown racial stereotypes, and enabling students to better understand different races. In order to reap the many benefits derived from racial diversity, law schools must admit a “critical mass” of qualified applicants of color, including a representation of African-American law students. *Grutter v. Bollinger* followed the precedent set forth in *McLaurin v. University of Oklahoma Board of Regents*, in which the Supreme Court held that the lack of exchanges across racial lines impairs the ability of diverse students to engage in discussions, exchange ideas, develop as a professional, and gain leadership skills.²³

Racial diversity is an important factor for reaching the mission of higher education. As a result, it is necessary to bring students of diverse ideas, backgrounds and experiences together.²⁴ The inclusion of law students from different racial backgrounds creates a healthy debate derived from diverse opinions; the absence of diversity creates a void in the learning environment and a correlating void in the legal profession.²⁵ In addition to the “robust exchange of ideas,” there is also a need for diversity in perspectives and life experiences to prevent feelings of isolation and alienation experienced by students when they are separated from a “critical mass” of others that share their same racial heritage.²⁶

Law schools have a mandate to ensure racial diversity in the classroom.²⁷ The ABA standards on equal opportunity and diversity require law schools to take “concrete action” to grant full opportunities for the study of law and professional opportunities to practice law to members of underrepresented populations, like African-Americans.²⁸

The benefits derived from diversity move beyond the classroom to the society as a whole since low enrollment of African-American law students leaves fewer attorneys of color in America’s history and less diversity on the bench and in the legal bar.²⁹ Achieving diversity is important for ensuring the “survival of our justice system, which is the connecting link between the rule of law and society,” according to 2000 ABA President William G. Paul.³⁰ Diversity in the law school student body will also alter the perception that the legal profession is not responsive to the needs of diverse populations.³¹ Former Detroit Mayor Dennis W. Archer stated that “[t]he strength of the justice system and our profession depends on the level of respect that people have for it.”³² The lack of racial diversity threatens the future of the justice system because racial equality cannot be reached until access to legal education is made available to all members of society.³³

METHODS FOR INCREASING THE ENROLLMENT OF AFRICAN-AMERICANS

The absence of a racially diverse student body in law schools across the nation has diminished the possibility of obtaining the benefits derived from a diversity of opinion in the classroom and collaboration outside of the classroom.³⁴ Researchers have attributed this decline to the dwindling pipeline of African-American students interested in pursuing a law degree³⁵ and barriers in the law school admission process, specifically Law School Admission Test (“LSAT”) performance percentiles and *U.S. News and World Report* rankings.³⁶

PIPELINE OF FUTURE LAW SCHOOL APPLICANTS

Due to the historical barriers to higher education that flowed from *Plessy v. Ferguson*, there is a need to implement measures that provide a large number of African-American students with quality education to compete in higher education opportunities, such as law school.³⁷ Despite the promise of equal opportunity embodied in *Brown v. Board of Education*, a disproportionate number of African-American children today attend rural and under-funded schools that are predominantly Black and unequal to their suburban counterparts.³⁸ Justice Thurgood Marshall highlighted in *Bakke v. Regents of University of California*, the need to be intentional in promoting racial diversity by creating a racial class-based remedy to address America’s history of discrimination against African-Americans.³⁹

Class-based discrimination is evidenced by the unequal opportunities in primary and secondary schooling that have placed applicants of color at an academic disadvantage.⁴⁰ Research in career choice and counseling psychology demonstrates that in order to encourage young people to pursue a particular career, they must be provided with the following opportunities: “career pathway education, career role models, social support and persuasion, and a chance to experience and enjoy career-related tasks.”⁴¹

SUCCESSFUL PIPELINE INITIATIVES

A partnership has been established between the National Association for Legal Career Professionals (“NALP”) and Street Law Incorporated to offer career development opportunities to low-income school children.⁴² This program will pair NALP sponsored law firms with local high schools. Practicing attorneys will teach law-related topics at high schools, including substantive areas of the law, the legal profession, and legal career paths. Street Law Inc.’s three decades of experience in academic training helps it provide ongoing support to participating law firms and high schools. Street Law Inc.’s efforts in improving diversity have focused on increasing the number of young people who express an interest in legal careers.

Advocates committed to replenishing the pipeline of African-American applicants strongly support mentorship pro-

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gramming.⁴³ Mentorship offers the guidance needed to aid youth in career development.⁴⁴ These efforts should begin in elementary schools, focusing on fourth and fifth grades, while students have time to explore long-term career goals and see the practice of law as a realistic possibility.⁴⁵ One such opportunity can be found in serving as a mock trial coach. Monte Squire suggests that mentorship can help to prepare the next generation of lawyers.⁴⁶ Squire's work includes mentoring students at Howard High School and coaching their mock trial team. As a result of Squire's involvement, students have expressed increased self-confidence as well as interest in legal careers.⁴⁷ Twelfth grader Terrance Potter is determined to become an attorney: "I want to be an attorney because I have an interest in the political and legal process."⁴⁸ Gursimrat "Simmy" Kaur gained valuable skills to prepare for his future in higher education through Squire's mentoring. Simmy said "[Mock trial] challenges me academically and hones my group interaction skills, which are skills that I may need in college."⁴⁹

It is important to have lawyers and students of color involved as mentors.⁵⁰ Young students can then see themselves in the mentors' images and adopt higher goals of academic success.⁵¹ Maya Harris, Executive Director of the American Civil Liberties Union of Northern California, is devoted to mentoring students and describes her commitment as a "responsibility."⁵² She acknowledges that others opened doors for her and she challenges attorneys of color to open the door wider for future generations. Community involvement is an integral part of helping students to explore career options. Replenishing the pipeline requires a collective effort of the African-American community in encouraging African-American students to pursue a career in the legal profession.⁵³

FINANCING A LEGAL EDUCATION

Socioeconomic barriers limit access to law school for African-American students.⁵⁴ Law school is a substantial investment of at least \$100,000; the average amount of law school debt is \$85,000.⁵⁵ Some initiatives have been successful in making law school accessible by providing financial support. For example, Seattle University admits 30 diverse students that demonstrate an "indicia of success" and offers financial and academic support for each.⁵⁶ At a national level, the 2000 ABA President William G. Paul raised \$1.3 million in less than a year to offer scholarship funds to students of color in need.⁵⁷ These efforts address the financial challenges experienced by African-American students as they seek to finance a legal education.

BARRIERS IN LAW SCHOOL ADMISSION

The decline of African-American law student enrollment has been attributed to the over-reliance on standardized tests and influence of national rankings.⁵⁸ According to Nussbaumer, efforts during the past ten years to further diversity by enrolling more African-American law school students have

failed because law school admission and accreditation practices have in effect created a system of de facto racial segregation in America's law schools.⁵⁹ The majority of law schools use the LSAT scores as a factor in determining admission eligibility. The LSAT/UGPA index demonstrates a measure of cognitive ability but only predicts about 25% of a law student's success during the first year.⁶⁰

African-American students tend to score lower on the LSAT than the national average.⁶¹ The average LSAT scores for African-Americans are 143–144,⁶² while the national average is 150.⁶³ Okechukwu Oko argues that this poor academic performance is not reflective of an innate lack of academic skills, but is caused by factors such as racial and socioeconomic barriers.⁶⁴ Oko attributes poor performance on the LSAT to poor academic training, lack of mentorship, and limited access to financial resources.⁶⁵ Low scores serve as a bar to admission. When law schools receive pressure from ABA accreditors to limit the number of applicants with LSAT scores less than 141,⁶⁶ this limits the number of African-Americans that will enter law school.

A more holistic, individualized approach to the admission process would be to provide an in-depth analysis of each applicant's qualifications.⁶⁷ By applying this approach, Louisiana State University has made strides in increasing African-

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American law student enrollment.⁶⁸ Studies have shown that there are a number of alternative assessment measures of academic success in law school beside the LSAT: emotional intelligence (determining how a person can regulate, manage and perceive emotions), accomplishment record history (highlighting achievements in strategic planning, problem solving and research), situational judgment (evaluating one's decision making skills), and moral responsibility (examining the evolution of one's moral development).⁶⁹ The use of alternative cognitive assessment tools has decreased the difference in performance results between African-American and White-American students. Dr. Zedeck has used a variety of measures to test cognitive ability: instead of giving exams administered through traditional paper and pencil methods, he has used videotape demonstrations and then asked test participants to respond to the video.⁷⁰ Through this method, he was able to reduce the performance gap between African-Americans and White-Americans by half of a standard deviation.⁷¹

Universities have also tried alternative methods that offer a more individualized selection process without taking into account LSAT scoring. The University of Michigan has created a new special admissions program called the "Wolverine Scholars Program." This program will not consider LSAT scores.⁷² Admission will be determined instead by a student's grade point average, leadership experience, community service, and resilience in dealing with adversity.

LSAT scores also influence national law school rankings for the U.S. News and World Report.⁷³ This ranking system does not measure a law school's ability to reach the most "robust exchange of ideas;" instead the rankings focus on numerical data, like the LSAT. This influences the admission selections of law schools as they strive to build a national reputation.⁷⁴

CONCLUSION

This literature review explored the research related to the enrollment of African-American students in law school, the effects of low enrollment on the law school culture, and evidence of successful initiatives that have increased the number of African-Americans admitted to law school. The literature review began by examining the historical barriers of racial segregation in law schools which led to the birth of affirmative action and emphasis on racial diversity. The key case in this analysis, *Grutter v. Bollinger*, created precedent by allowing law schools to use race as a plus factor during the admission process analysis. The underlying goal of *Grutter v. Bollinger* was to create the most “robust exchange of ideas” through the inclusion of voices from various different racial backgrounds. Despite these efforts, the matriculation of African-American law students has continued to remain comparatively low.

The question then becomes: “How do law schools increase the presence of the African-American voice in the law school environment to create the most ‘robust exchange of ideas?’” Researchers assert that law schools and attorneys alike must make a concerted effort to increase racial diversity by creating a

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pipeline of qualified African-American law school applicants.⁷⁵ Researchers have also found barriers in the admission process due to LSAT scores and U.S. News World and Report rankings.⁷⁶

The literature available does not adequately address attrition rates. The literature challenges the validity of LSAT scores being a measure of future academic success but fails to offer data that either approves or disapproves this premise. There is still a need for studies that explore the role of the LSAT in predicting academic performance, bar passage, and ability to practice law. I would recommend additional research in these areas. The students recently admitted to the University of Michigan without taking the LSAT would make an ideal research sample. Researchers should monitor their performance from their first year at school through their bar passage.

In closing, the United States Supreme Court’s vision of creating a most “robust exchange of ideas” is an inspirational goal that should become a reality. The law school culture would benefit immensely from an environment where students of various different racial heritages can gather together to discuss the nation’s most challenging issues and use their analytical and critical-thinking skills to address them.

ENDNOTES

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¹³ Nussbaumer, *supra* note 2.

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²⁵ W. DeCuir, *Diversity in the legal profession: What is the goal? Where do we stand?: Diversity within La. law schools*, 53 LA. B. J., 124, 125 (2005).

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³¹ Oko, *supra* note 9, at 190.

³² Podgers, *supra* note 15, at 94.

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ENDNOTES CONTINUED

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- ³⁷ Henry, *supra* note 4.
- ³⁸ *Id.*
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- ⁴⁰ Calleros *supra* note 26.
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- ⁴² Olivia Clarke, *Improving diversity through pipeline programs*, STREET LAW, (visited July 8, 2008) <http://www.streetlaw.org/en/Article.69.aspx>.
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- ⁴⁵ Calleros, *supra* note 26.
- ⁴⁶ Squire, *supra* note 43, at 1.
- ⁴⁷ *Id.* at 2.
- ⁴⁸ *Id.*
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- ⁶⁰ Mutua, *supra* note 21, at 590-595.
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- ⁶³ LSAT Center, 2005, available at <http://www.lsats-center.com/lsat-page2.html>.
- ⁶⁴ Oko, *supra* note 9, at 202.
- ⁶⁵ *Id.* at 201.
- ⁶⁶ Hayes, *supra* note 58.
- ⁶⁷ Decuir, *supra* note 25, at 125.
- ⁶⁸ *Id.*
- ⁶⁹ Mutua, *supra* note 21, at 549.
- ⁷⁰ *Id.*
- ⁷¹ *Id.*
- ⁷² Debra Cassens Weiss, *No LSAT allowed in Michigan Law School's special admissions program*, A.B.A. J., Sept, 26, 2008 available at http://abajournal.com/news/no_lsats_allowed_in_michigan_law_schools_special_admissions_program/.
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