

**ENDANGERED: HISTORICALLY BLACK LAW SCHOOLS?**  
by Gary S. Rosin

Submitted to Standards Review Committee, March 28, 2011  
(Revised May 24, 2011)

**1. Introduction**

I am a Professor Law at South Texas College of Law, Houston, Texas. I have studied Bar passage since 1995. I have written articles on that topic,<sup>1</sup> and submitted comments to the Standards Review Committee at the time of its initial consideration of ABA Interpretation 301–6.<sup>2</sup>

Interpretation 301–6 provides that a law school must meet minimum Bar-passage requirements to comply with Standard 301(a) regarding the quality of its educational program. As currently in force, a law school can meet the requirements based on either

1. first-time Bar passage rates no more than 15 percentage points below the blended average Bar passage rate for persons who graduated from ABA-accredited law schools, or
2. overall ultimate Bar passage rates (cumulative over several attempts) of at least 75%.

The Subcommittee on Bar Passage has proposed to raise the minimum Bar-passage requirements to (i) no more than **10%** below the average (first-time) or (ii) at least **80%** (ultimate).

The proposed revision of the Bar-passage benchmarks is in fact a *reversion* to benchmarks that were applied by the Accreditation Committee before the adoption of Interpretation 301–6. Moreover, the proposed benchmarks were proposed in May 2007, and ultimately were rejected. Thus, the Subcommittee on Bar Passage would take accreditation “Back to the Future.”

More importantly, the evidence suggests that those pre-Interpretation 301–6 Bar benchmarks resulted in a sharp reduction of the share of Black/African-American students at Historically Black Law Schools

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<sup>1</sup> See Gary S. Rosin, *Unpacking the Bar: Of Cut Scores and Competence*, 32 J. LEGAL PROF. 67 (2008) (submission version available on SSRN at <<http://ssrn.com/abstract=988429>>)(“*Unpacking the Bar*”); Gary S. Rosin, *Benchmarking the Bar: No Unity in Difference Scores* (2007) (available on SRN at <http://ssrn.com/abstract=1017996>).

<sup>2</sup> See, Gary S. Rosin, *Reports and Comments on Proposed ABA Interpretation 301–6* (2008) (available on SSRN, at <http://ssrn.com/abstract=1080480>)

("HBLs"). At half of HBLs, Black/African-American students are not the predominant racial or ethnic group, but at best a plurality. In one HBLs, students are now predominately White/Caucasian.

At a time of declining interest in attending law school, and decreasing state funding of higher education, 10%/80% benchmarks risk pressuring Historically Black Law Schools to reduce Black/African-American enrollment even further.

## 2. The Importance of Historically Black Law Schools

Despite the Supreme Court's decision in *Grutter v. Bollinger*, 539 U.S. 306 (2003), Historically Black Law Schools still play an important role in the education of Black/African American law students. According to the ABA's statistics, the percentage of entering law students who were Black/African American peaked in 1998, at 8.1%, and then fell to 6.5% in 2005. Since then, that percentage increased to 7.3% in 2009.

Because those statistics include students enrolled in Historically Black Law Schools, they do not show the level of minority enrollment in law schools in which a majority of the students are White/Caucasian—the bulk of U.S. law schools.

**Table 1**  
**Fall 2006 through Fall 2009**  
**Minority First-Year Enrollment by Ethnicity**  
**Majority White/Caucasian Law Schools**

	<b>Overall</b>
Black/African American	6.4%
Asian Pacific Islander	8.0%
Hispanic	6.7%
Native American	0.9%
<b>Total Minority</b>	<b>22.0%</b>

As shown in Table 1, for the Fall 2006 through Fall 2009 entering classes, Black/African-American enrollment in majority White/Caucasian law schools has averaged 6.4%, lower than the shares of both Asian/Pacific Islander, and Hispanic, entering students:

Six ABA-accredited law schools are Historically Black Law Schools: Howard University and the University of the District of Columbia (DC); Florida A&M (FL); Southern University (LA), North Carolina Central University (NC), and Texas Southern University (TX). As shown in Table 2, these six schools are vital to the opportunity of Black/African-American students to enroll in law school.

**Table 2**  
**Historically Black Law Schools**  
**Fall 2005 through Fall 2009 Entering Classes (Combined)**  
**Share of Total and Black/African-American Students by Jurisdiction**

School	Jurisdiction	Total	Black/ African-American
Howard & UDC	DC	12.4%	49.0%
Florida A&M	FL	6.4%	25.9%
Southern	LA	21.0%	63.6%
NC Central	NC	20.3%	61.5%
Texas Southern	TX	7.4%	43.8%
	<b>US</b>	2.0%	15.7%

For Fall 2005 through Fall 2009, even though students at the six HBLs represented only 2.0% of entering classes, as a group, those students represented 16.3% of Black/African-American entering students, as a group. Within the jurisdictions in which they are located, HBLs represented a much greater portion of Black/African-American law students—from 25.9% to 63.6% of students entering law schools in each jurisdiction.

If the ABA is serious about increasing the diversity of the legal profession, especially in increasing the number Black/African American lawyers, it needs Historically Black Law Schools.

### 3. The LSAT and Bar Passage Rates

In recent years, there has been great concern about law schools relying too heavily on LSAT scores in admissions. The argument is that LSAT scores are at best an imperfect predictor of the academic success of *individual* law students, as measured by first-year GPAs. Moreover, academic success is an even more imperfect predictor of success as a practicing lawyer. That said, the LSAT is more reliable when it comes to the predicting the success of *groups*, including group Bar passage rates.<sup>3</sup>

Using the LSAC National Longitudinal Data file, which includes data used in the LSAC Bar Passage Study,<sup>4</sup> I calculated the first-time and cumulative Bar passage rates of persons with *the same LSAT score*. Using logistic regression, I modeled the relationship between LSAT and each of

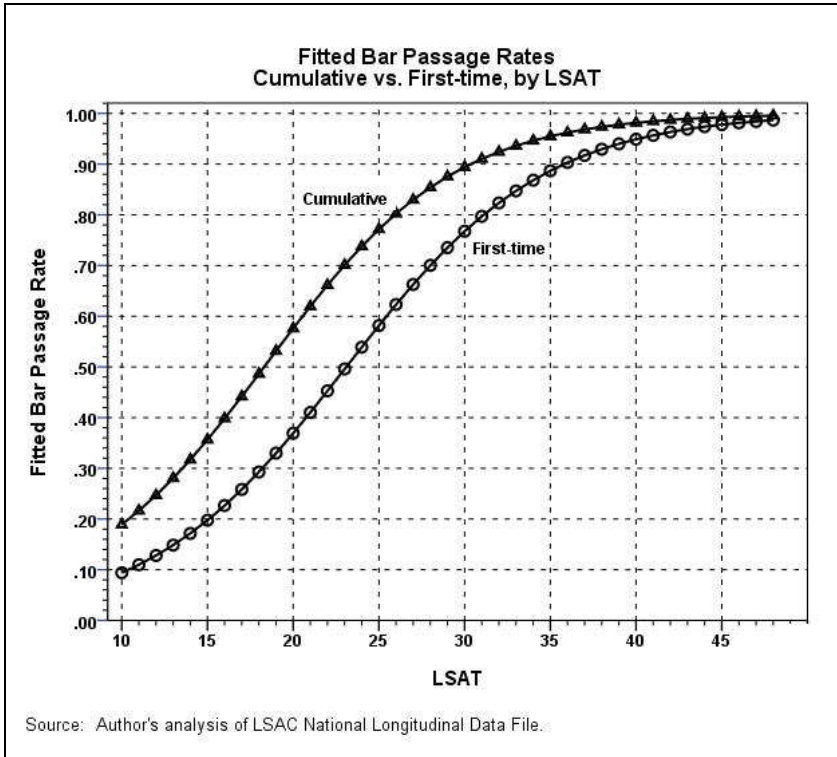
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<sup>3</sup> See, e.g., Rosin, *Unpacking the Bar*, note 1, *supra*.

<sup>4</sup> Linda F. Wightman, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY (1998) (“BAR PASSAGE STUDY”)

first-time, and cumulative, Bar passage rates.<sup>5</sup> Chart 1 shows the relationships between LSAT and the fitted Bar passage rates predicted by the two models.

Chart 1<sup>6</sup>



Perhaps the most notable feature of the curves shown in Chart 1 is that the slope of the curves—effect on Bar passage rates of a one-unit difference in LSAT (*e.g.*, 35 vs. 36)—varies across the range of LSATs. The slopes are flattest—a one unit change in LSAT has the smallest effect—when fitted Bar passage rates are near 1.0 (100%). The slopes increase until fitted Bar passage rates are at 0.50 (50%), where the slopes are steepest: for first-time Bar passage rates, at an LSAT of around 15; and for cumulative Bar passage rates, at an LSAT of about 19.<sup>7</sup>

<sup>5</sup> The results of the logistic regressions are available from the author.

<sup>6</sup> At the time of the LSAC Bar Passage Study, the entering class of Fall 1991, LSAT scores were reported on a scale that ranged from 10 to 48. BAR PASSAGE STUDY at 6.

<sup>7</sup> The *increase* in fitted Bar passage rates after multiple attempts is largest at LSATs of 21 and 22, and becomes smaller as LSATs fall below 21 or rise above 22.

This phenomenon is important in crafting an entering class, which will include persons with a range of different LSATs. The ramifications of the phenomenon loom especially large for law schools with lower LSAT 25<sup>th</sup> percentiles.

And there's the rub: many of Historically Black Law Schools have entering-student LSAT scores at or near the bottom of those of all law schools in the continental United States.<sup>8</sup> For example, over the Fall 2006 through Fall 2009 entering classes, the LSAT 25<sup>th</sup> percentiles for all law schools averaged 154.7, with a standard deviation of 5.68. Excluding the three law schools in Puerto, the bottom four ABA law schools were Florida A&M, Southern, North Carolina Central and Texas Southern, while District of Columbia and Howard were grouped around the 15<sup>th</sup> percentile.

**Table 3**  
**Historically Black Law Schools**  
**Average of LSAT 25<sup>th</sup> Percentiles**  
**and Percentile Ranking among ABA Law Schools**  
**Fall 2006 through Fall 2009 Entering Classes**

School	Average LSAT 25 <sup>th</sup> Percentile	Percentile Ranking
Florida A&M	142.50	05.0 <sup>th</sup>
Southern	142.75	01.0 <sup>th</sup>
NC Central	143.50	01.5 <sup>th</sup>
Texas Southern	145.00	02.0 <sup>th</sup>
U. D.C.	148.75	13.6 <sup>th</sup>
Howard	149.25	16.2 <sup>th</sup>

While each school is required to report recent cumulative Bar passage rates to the ABA, that information is neither published in the *ABA-LSAC Official Guide to ABA-Approved Law Schools* (as of the 2011 edition), nor distributed to all ABA law schools via the annual “ABA take-offs.” As a result, there is no data from which to perform a study along the line of that reported in my article, *Unpacking the Bar: Of Cut Scores and Competence*, 32 J. LEGAL PROF. 67 (2008), for first-time Bar passage rates. While the shape of the resulting logistic “S” curve in such a study is unknown, the effect of a one-point change in law-school LSAT on law-school cumulative Bar passage rates will be much larger at law schools with LSATs at the low end than for law schools with LSATs at the high end. As a result, Historically Black Law Schools will be at much greater risk of being affected

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<sup>8</sup> The LSAC Bar Passage Study included only ABA-accredited law schools located in the continental United States. BAR PASSAGE STUDY at 5-6.

by raising the minimum “ultimate” (cumulative) standard in 301–6 from 75% to 80%.<sup>9</sup>

#### 4. Cumulative Bar Passage Rates and HBLSS

The Standards Review Committee based the original 75% cumulative benchmark on (i) the LSAC Bar Passage Study (students entering law school in 1991<sup>10</sup>), (ii) a study commissioned by Texas (students taking the Texas Bar exam for the first time in July 2004), and (iii) a study commissioned by the State of New York (students taking the New York Bar exam for the first time in July 2005). In those studies, cumulative Bar passage rates for *all* Black/African-American students ranged from 75% to 78%. Neither the LSAC, Texas nor New York studies discussed cumulative Bar passage rates of Historically Black Law Schools.

Neither the LSAC Bar Passage Study nor the underlying LSAC National Longitudinal Data file identify by name the law schools attended by students participating in the study. The Bar Passage Study organized law schools into six “clusters” based on varying attributes of the law schools included in the study of Fall 1991 entering classes.<sup>11</sup> As a result, the LSAC National Longitudinal Data File offers an imperfect, but distorted look at cumulative Bar passage rates at Historically Black Law Schools.

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<sup>9</sup> It goes without saying that the same is also true for increase in the first-time standard to 10% below: Historically Black Law Schools will be at much greater risk.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 8-9.

**Table 4**  
**Description of Law School Clusters<sup>12</sup>**  
**LSAC Bar Passage Study**

<b>Cluster</b>	<b>Description</b>	<b>Group</b>
1	Among least expensive. Slightly below average in size. Slightly above average in selectivity, UGPAs and LSATs. Mostly public schools. (50 schools)	3
2	The least selective, below average in cost, and smaller. Lowest proportion of minority students. Lower UGPAs and LSATs. (18 schools)	5
3	Larger, more expensive, less selective, and lower UGPAs and LSATs than Cluster 1. Mostly private. (50 schools)	4
4	Highly selective, with UGPAs and LSATs among highest in country, but below Cluster 5. Among the more expensive of the law schools. Average size is significantly larger than any other group. (14 schools)	2
5	Most selective and most expensive. Highest UGPAs and LSATs. Much smaller than Cluster 4 schools and much larger than Cluster 6 schools. (16 schools)	1
6	Among the smallest and the least expensive. High proportion of minority students. (7 schools)	6

*The “Group” numbers shown in the table are the LSAC BPS clusters, in the reverse order of their LSAT means, from high (Cluster 5) to low (Cluster 6).*

It is likely that Group 6 included the four public (and thus less expensive) Historically Black Law Schools that were ABA-accredited in 1991: University of District of Columbia (accredited in 1991), North Carolina Central, Southern, and Texas Southern. It is unknown whether it also included Howard, which is private. That means that Group 6 included two, or possibly three, other law schools, the student bodies of all of which were at least plurality, if not majority, White/Caucasian.

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<sup>12</sup> The descriptions of the six clusters are syntheses of those found in the USER’S GUIDE, LSAC NATIONAL LONGITUDINAL DATA FILE, at 16.

As shown in Table 5, the cumulative Bar passage rate for students in Group 6 was 78.2%, or close to that of Black/African-American students in *all* Groups from the LSAC Bar Passage Study. In Group 6, only White/Caucasian students had cumulative Bar passage rates above the current 75% benchmark in Interpretation 301–6. Given that the White/Caucasian share of enrollment for the Historically Black Law Schools in Group 6 was lower than for the other two or three schools in Group 6, it is likely that the cumulative Bar passage rate of each of those schools was lower, perhaps much lower, than the 78.2% passage rate for Group 6 overall.

**Table 5**  
**Group 6 from LSAC Bar Passage Study**  
**Racial and Ethnic Distribution, Average LSATs,**  
**First-time and Cumulative Bar Passage Rates**

	<b>Percentage</b>	<b>Average LSAT</b>	<b>First-Time Bar Passage</b>	<b>Cumulative Bar Passage</b>
Native American	01.1%	27.7	33.3%	66.7%
Asian/Pacific Islander	02.6%	28.4	31.3%	62.5%
Black/African American	42.9%	25.8	56.5%	69.5%
Hispanic	10.6%	26.3	61.5%	73.8%
White/Caucasian	42.7%	32.0	78.3%	87.6%
<b>Overall</b>		28.6	66.3%	78.2%

### **5. Prior use of the 10% Below Bar Passage and Law-School LSAT Increases**

The Accreditation Committee has long used both Bar passage rates and student LSAT scores to measure a law school’s compliance with the Standards and Rules of Procedure for Approval of Law Schools<sup>13</sup> (“ABA Standards”). A law school’s Bar passage rate is one measure of the adequacy of the quality of its program of legal education under ABA Standard 301(a).<sup>14</sup> Both student LSAT scores and Bar passage rates are measures of

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<sup>13</sup> 2010-2011 Standards and Rules of Procedure for Approval of Law Schools (*hereinafter* “ABA Standards”).

<sup>14</sup> ABA Standards, *supra* note 13, at Standard 301(a) (A law school shall maintain an educational program that prepares its students *for admission to the bar*, and effective and responsible participation in the legal profession.”) (emphasis added); *see also*, ABA Standards, *supra* note 13, at Interpretation 301-3 (“Among the factors to be considered in assessing the extent to which a law school complies with this Standard are the rigor of its academic program, including its assessment of student performance, *and the bar passage rates of its graduates.*”) (emphasis added).

the quality of students admitted by a law school for purposes of ABA Standard 501(b).<sup>15</sup>

Professor George B Shepherd has shown how the Accreditation Committee linked entering student academic credentials and low Bar passage rates when taking unfavorable action against law schools under initial or periodic review.<sup>16</sup> Professor John Nussbaumer has documented a general pattern of increases in entering class LSAT 25<sup>th</sup> percentile in schools under ABA accreditation review,<sup>17</sup> with specific examples of two unidentified law schools under either initial or periodic review.<sup>18</sup>

Because, the mean scores of Black/African-American takers are substantially lower than those of students in other racial or ethnic groups, a natural consequence of increases in the LSAT scores of entering classes would be the admission of fewer Black/African-American students. Prof. John Nussbaumer has documented how increases in law-school LSAT 25<sup>th</sup> percentiles is associated with decreases in Black/African-American participation in law school.<sup>19</sup>

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<sup>15</sup> ABA Standards, *supra* note 13, at Standard 501(b) (“A law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program *and being admitted to the bar.*”) (emphasis added); *see also* ABA Standards, *supra* note 13, at Interpretation 501-3 (“Among the factors to consider in assessing compliance with Standard 501(b) are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, *the bar passage rate of its graduates*, and the effectiveness of the law school’s academic support program.”) (emphasis added).

<sup>16</sup> George B. Shepherd, *No African-American Lawyers Allowed: The Inefficient Racism of the ABA’s Accreditation of Law Schools*, 53 J. LEGAL EDUC. 103, 114-17 (2003) (discussing inspections of Thomas Jefferson School of Law, Atlanta’s John Marshall, Barry University, and Texas Southern University); *see also* Professor Shepherd argues that the practices of the ABA Accreditation Committee had created a de facto floor of 143 for the average LSAT of entering law-school classes, as well as a minimum entering student LSAT of 140. *Id.* at 114; *see also* John Nussbaumer, *Misuse of the Law School Admissions Test, Racial Discrimination, and the De Facto Quota System for Restricting African-American Access to the Legal Profession*, 80 ST. JOHN’S L. REV. 167, 175-76 (2006) (“*Restricting Access*”).

<sup>17</sup> John Nussbaumer, *The Disturbing Correlation between ABA Accreditation Review and Declining African-American Law School Enrollment*, 80 ST. JOHN’S L. REV. 991, 992-97, 1004 tbl 1 & 1005 tbl 2 (2006) (“*Disturbing Correlation*”).

<sup>18</sup> *Restricting Access*, *supra* note 16, at 177-79, 181-F tbls 9 & 10.

<sup>19</sup> *Disturbing Correlation*, *supra* note 16, at 999; *No African-American Lawyers Allowed*, *supra* note 16, at 105; *see also*, John Nussbaumer & Christopher Johnson, *The Door to Law School* (February 1, 2011) (forthcoming, U. MASS. ROUNDTABLE SYMP. L.J. 2011) (unpublished manuscript, on file with author), at 5-7).

All of the examples discussed by Professors Nussbaumer and Shepherd occurred *before the adoption of Interpretation 301–6*. At that time, the Accreditation Committee had been using a benchmark for *first-time* Bar passage of below 70% and more than 10 points below the state average for ABA-accredited schools—the same benchmark that is now being considered for adoption.<sup>20</sup> There is no reason to believe that reversion to the 10% below first-time standard would not tend to the same result.

The only possible saving grace is cumulative/ultimate Bar passage rates. Before the adoption of Interpretation 301–6, the Accreditation Committee also relied, where possible, on cumulative (ultimate) Bar passage rates, but that committee has never indicated what minimum that committee used before Interpretation 301–6.<sup>21</sup> While the Bar Passage Subcommittee has asserted that post-301–6 accreditation reviews of 100 law schools has indicated no problem with cumulative Bar passage rates, neither that data, nor related law-school profile information necessary to analyze it, is publicly available. Nor is it clear how the Accreditation Committee came by that information, given that neither the ABA Annual Questionnaire nor the Site Evaluation Questionnaire requires a law school to disclose information about its cumulative Bar passage rates unless it does not meet the first-time Bar-passage benchmark.

## **6. Prior Bar Passage Standards Reduced Black/African-American Enrollment, Especially at the HBLs**

As both Professor George B. Shepherd<sup>22</sup> and Professor John Nussbaumer<sup>23</sup> have argued, past practices of the ABA Accreditation Committee the Accreditation Committee have pressured law schools to raise the LSAT scores of its entering classes in order to increase bar passage rates, which have resulted in decreases in the share of Black/African-enrollment.<sup>24</sup>

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<sup>20</sup> See, e.g., Memorandum from Catherine Carpenter, Chair Subcommittee on Bar Passage—301–6 to Standards Review Committee, *Reexamination of Current Bar Passage Requirements*, at 1 (November 2, 2010) (“Subcommittee November Memorandum”) (copy on file with the author); Memorandum from Greg Murphy, Chair, Accreditation Committee, to Richard Morgan, Chair, Standards Review Committee, *On Interpretation 301–6*, at 1 (May 2, 2007) (“Murphy Memorandum”) (copy on file with author).

<sup>21</sup> Murphy Memorandum, *supra* note 20, at 2.

<sup>22</sup> George B. Shepherd, *No African-American Lawyers Allowed*, *supra* note 16.

<sup>23</sup> John Nussbaumer, *Restricting Access*, *supra* note 16, at 178-79 (2006) (“*Restricting Access*”); John Nussbaumer, *Disturbing Correlation*, *supra* note 17.

<sup>24</sup> George B. Shepherd, *No African-American Lawyers Allowed*, *supra* note 16, at 114; John Nussbaumer, *Restricting Access*, *supra* note 16, at 175-79.

The Bar Passage Subcommittee now proposes to revert to past practices. Given both their missions of educating Black/African American lawyers, and their relative position in the market for law students, the HBLs are especially affected by increases in the LSAT scores of its entering classes.

Florida A&M,<sup>25</sup> Howard University, North Carolina Central, Southern, and Texas Southern were all formed, as early as 1869 (Howard), but largely in the 1940's, with the primary mission of educating Black/African American lawyers. With those roots, one might expect that their student bodies would still be predominately Black/African American. But, as Bob Dylan once sang, "the times they are a changin'."

**Table 6**  
**Historically Black Law Schools**  
**Average Ethnic Distribution by School,**  
**Fall 2007 through 2009 Entering Classes**

<b>School</b>	<b>Asian/ Pacific Islander</b>	<b>Black/ African- American</b>	<b>All Hispanic</b>	<b>White/ Caucasian</b>
Univ. of DC	5.9%	30.2%	11.7%	44.8%
Florida A&M	4.6%	41.2%	15.4%	36.1%
Howard	3.4%	78.4%	3.4%	5.6%
N. C. Central	2.5%	50.6%	2.6%	39.7%
Southern	0.4%	62.5%	1.2%	35.1%
Texas Southern	7.2%	49.0%	22.8%	18.2%

As shown in Table 6, over the three most recent academic years for which information has been published in the Official Guide, at the University of the District of Columbia, White/Caucasian students were a plurality of the entering classes. At the three of the remaining schools, Florida A&M, North Carolina Central, and Texas Southern, Black/African-American students constituted at least a plurality of entering students, with the last two hovering near 50% of the class. Only Howard and Southern remain strongly Black/African American institutions.

For the Fall 2007 through Fall 2009 entering classes, at five of the schools, White/Caucasian students had a substantial representation—at least 35%. At Texas Southern, the second-largest component of entering classes was Hispanic students. Only Howard had no strong representation of racial or ethnic groups, other than Black/African Americans.

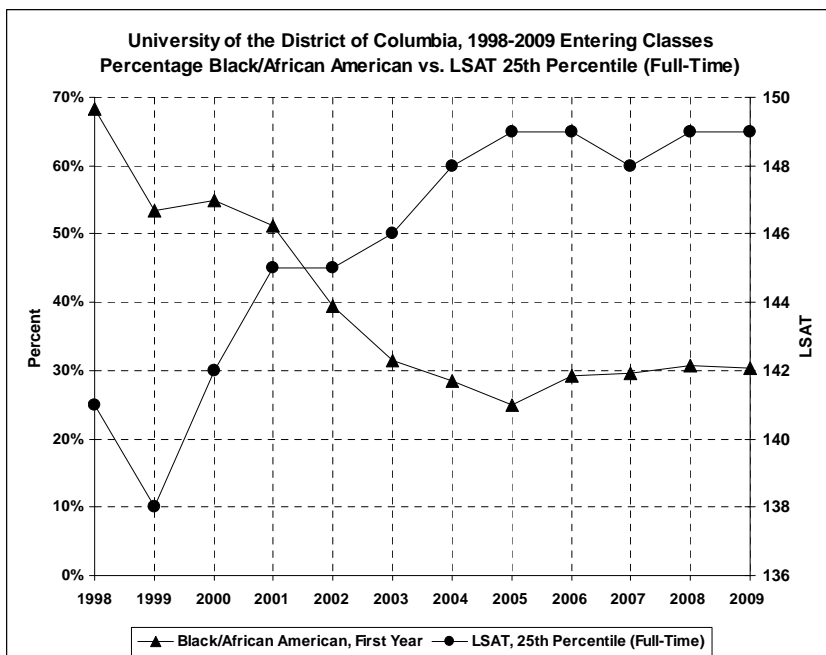
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<sup>25</sup> The law school at Florida A&M was closed in 1968, and then reopened in 2002. <http://law.famu.edu/go.cfm/do/Page.View/pid/5> (last visited March 28, 2011).

*University of the District of Columbia*

As recently as 1998, Black/African-American students made up 68.3% of the entering class at the University of the District of Columbia (UDC). From 1999 to 2001, the Black/African-American share of entering classes dropped to just over 50%. Beginning in 2002, the Black/African-American share of entering classes fell to as low as 25.0% for the 2005 class, but has since stabilized at around 30%.

**Chart 2**



As shown in Chart 2, decreases in the Black/African-American share of entering classes have been mirrored by increases in the 25<sup>th</sup> percentile of the LSAT scores of the entering classes.

In his article, *The Disturbing Correlation between ABA Accreditation Review and Declining African-American Law School Enrollment*<sup>26</sup> Professor John Nussbaumer argues that the ABA uses its initial and periodic accreditation reviews to pressure law schools to raise the LSAT scores of the low end of their entering classes, with the effect of excluding Black/African Americans. In “Case Study One,” discusses the experience of “School X”<sup>27</sup>

<sup>26</sup> John Nussbaumer, *Disturbing Correlation*, *supra* note 17; *see also*, John Nussbaumer, *Restricting Access*, *supra* note 16, at 178-79.

<sup>27</sup> John Nussbaumer, *Restricting Access*, *supra* note 16, at 178.

Between 1999 and 2004, School X underwent a radical demographic transformation. It raised the LSAT 25<sup>th</sup> percentile of its entering classes from 138 to 148. Concurrently with that increase, total minority enrollment fell from 74% to 46% (*i.e.*, it became a majority White/Caucasian school), and Black/African-American enrollment fell from 62% to 32%.<sup>28</sup>

UDC is probably School X. First, the entries for LSAT 25th percentile, total enrollment, minority enrollment, and African-American enrollment shown in Table 9<sup>29</sup> match the entries for UDC in the 2001 through 2006 Official Guides. Second, it “is located in a major metropolitan area with a large minority and African-American population.”<sup>30</sup> Third, it “seeks to provide nontraditional students with access to the legal profession.”<sup>31</sup> Third, Prof. Nussbaumer says that School X was “recently” given full ABA approval.<sup>32</sup> *Disturbing Correlations* was published in 2006; UDC was fully accredited in 2005.<sup>33</sup>

After the District of Columbia Law School merged with the University of the District of Columbia, it reapplied for ABA accreditation in 1998.<sup>34</sup> According to Professors Derek Alphan, Tanya Washington & Vincent Eagan, in 1999, UDC received an ABA Action Letter asking it “to examine the relationships of LSAT scores and UGPAs to performance in the law school’s academic program and to the first time bar performance.”<sup>35</sup> After the resulting study, UDC changed in its admissions policies” in 2000,<sup>36</sup> and again in 2002,<sup>37</sup> in the belief that “the steady increase in statistical profiles of the entering class would lead to higher bar passage rates.”<sup>38</sup>

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<sup>28</sup> *Id.* at 178 & 181-F, tbl. 9.

<sup>29</sup> *Id.* at 181-F, tbl. 9.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *University of the District of Columbia David A Clarke School of Law, School of Law History*, <http://www.law.udc.edu/?page=History> (last visited May 6 2011).

<sup>34</sup> *Id.*

<sup>35</sup> Derek Alphan, Tanya Washington & Vincent Eagan, PhD., *Yes We Can Pass the Bar. University of the District of Columbia, David a Clarke School of Law Bar Passage Initiatives and Bar Pass Rates—From the Titanic to the Queen Mary*, 14 UDC/DCSL L. REV. 9 at 16 n.42 (2011) (“*Yes We Can Pass the Bar*”).

<sup>36</sup> *Id.* at 16.

<sup>37</sup> *Id.* at 13 n.24 (discussing the adoption of the “Reliable Plan”).

<sup>38</sup> *Id.* at 14 & nn.30-31.

*Florida A&M*

By the time the law school at Florida A&M was reorganized after a hiatus of over thirty years,<sup>39</sup> and the ABA began publishing information on its entering classes, it was already only a plurality Black/African-American institution.

**7. Conclusion**

According to the Bar Passage Subcommittee:

In attempting to provide a bright line rule on bar passage that also fits a range of circumstances (including geographical diversity of bar examination rigor, missions of law schools, and treatment of provisionally accredited law schools) Interpretation 301-6 broadened considerably the 70/10 rule. It is seen by many as providing an extremely low threshold for bar passage compliance, and consequently, a less than meaningful compliance requirement.<sup>40</sup>

The Subcommittee is also concerned that the previous 10% below rule was rejected too hastily: “it is unclear whether there was sufficient vetting of that rule to discount it as a viable option.”<sup>41</sup>

The evidence suggests that the 10% below rule had a major adverse impact on Black/African American enrollment in general, and especially at Historically Black Law Schools. The 75% cumulative (ultimate) rate is based on overall performance by Black/African Americans. It is likely that the cumulative Bar passage rates of graduates of HBLs very probably was lower than the overall 75% passage rate.

The evidence also suggests that, if a more “meaningful compliance requirement,” such as the 10% below/80% benchmarks proposed by the Subcommittee on Bar Passage, the burden would fall most heavily on schools with the lowest LSAT scores of incoming graduates, many of which are Historically Black Law Schools. The result would be the HBLs further de-emphasizing their historical mission to educate Black/African-American lawyers.

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<sup>39</sup> History of Florida A&M, <http://law.famu.edu/go.cfm/do/Page.View/pid/5> (last visited March 28, 2011).

<sup>40</sup> Subcommittee November Memorandum, at 2.

<sup>41</sup> Memorandum from Subcommittee on Bar Passage and Interpretation 301-6 to Standards Review Committee, *Reexamination of Current Bar Passage Requirements: A Progress Report*, at 3 (December 20, 2010).