How to Attack the Legal Profession’s Diversity Problem
(Perspective)

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Editor’s Note: The author is a law professor who clerked for Justices Ruth Bader Ginsburg and Sandra Day O’Connor.

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This month the ABA’s Council, which bears responsibility for accrediting law schools, will consider a proposal to tighten the accreditation standard governing bar passage. The proposed standard is a modest one: It requires simply that three-quarters of a school’s graduates who choose to take the bar exam pass that exam within two years of their first try.

Opponents of the proposal argue that it will diminish diversity in the legal profession. They draw upon data showing that minority applicants pass the bar at lower rates than their white peers. Requiring law schools to meet this modest bar passage standard, they suggest, will close down schools that enroll a substantial number of minority students.

Some of these claims are well intentioned, but they are misguided. They endorse a system of legal education in which minority students disproportionately enroll at low-ranked law schools, pay top tuition to attend those schools, and fail the bar exam at distressingly high rates. This is not a recipe for diversifying the legal profession.

Law schools have much better tools for accomplishing that goal. We could lower tuition, which would help less affluent minorities afford law school. We could award scholarships based on need, rather than LSAT scores. We could reform teaching methods to support first-generation lawyers. We could devote more resources to pipeline programs that offer opportunities to high school and college students.

We could also help professors recognize the implicit bias that can affect their interactions with minority students. We could read the work of Columbia University Provost Claude Steele, who has described how professors unconsciously constrain the achievement of minority students. We could then coach ourselves on ways to break that dynamic.

These remedies would enhance the success of minority students at every law school. We don’t need to rely upon high-cost, low-performing law schools to give minority students an “opportunity” to pass the bar and become lawyers. We could do a much better job supporting minority students throughout legal education.

Many of us have become complacent about racial and ethnic diversity at our law schools. Our classrooms look moderately diverse and most of our students pass the bar within two years of graduation. We can all point to successful minority graduates — even a President of the United States! These milestones suggest that we have achieved a high degree of diversity.

Research, however, repeatedly shows that African American, Latino/a, and Asian American students receive lower grades in law school than their white classmates — even after controlling for LSAT scores, undergraduate grade-point average, and other admissions criteria. We also know that African American and Latino/a students borrow more heavily than their peers to attend law school. After graduation, they struggle longer to pay off this debt.
The best way to further diversify the legal profession is to attack these problems at every school, not to nurture a false hope that minority students will succeed by paying top dollar to attend law schools with low bar-passage rates. If every law school eased the financial burden on minority students, while also working to support those students’ highest aspirations in the classroom, we would enhance the success of our minority graduates. We would also attract a larger number of minority students to our programs, assuring much greater diversity in the profession.

These remedies require sacrifices by law schools and their faculty. Tenured professors might have to accept salary freezes, or give up summer research grants, to lower tuition. We might have to risk falling a few rungs on the U.S. News ladder by awarding scholarships based on need rather than LSAT scores. We would have to confront our implicit bias, learn how to overcome that bias, and embrace new forms of pedagogy. How many of our own practices are we willing to change to promote greater diversity in the legal profession? That is the true test of our commitment to diversity.