The Education Pipeline to the Legal Profession – A Primer and Guide

A Thought Paper by Professor Sarah Redfield, J.D., LL.M; and fellow members of the Education Committee of the ABA Council for Racial and Ethnic Diversity in the Educational Pipeline

Leaders of the legal profession have listed increased diversity among lawyers and judges as a high priority. Unfortunately, diversity by and large remains a goal and not an accomplishment. While there are many contributing factors to the stagnant numbers of diverse lawyers, the small number of diverse students in the educational pipeline to the legal profession is paramount. It is critically important that we increase opportunities for people of color to attend law school and enter the legal profession.

To address the growing interest in pipeline diversity, the ABA Council for Racial and Ethnic Diversity in Educational Pipeline offers resources to assist in understanding the key issues, fostering collaboration, and identifying successful strategies and solutions. This brief guide presents a summary of data on pipeline diversity and offers suggestions for further work and strategies for success.

Salient Background Facts

To understand and fully appreciate the seriousness of the challenges the profession faces in terms of diversity and the future, a number of factors should be reviewed. Taken together, they contextualize pipeline diversity and its importance to the legal profession.

The bar is hugely out of sync with the population now and will continue to grow further apart. The population is predicted to reach majority minority in 2042 and the white population (non-Hispanic) to be at 46% by 2050.

This disparity posits adverse impact on the ability of the legal profession to serve as the guardian of the rule of law in this country.

1 The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of either the American Bar Association or the Council for Racial and Ethnic Diversity in the Educational Pipeline unless adopted pursuant to the bylaws of the Association.
Since at least the Task Force Report in 1986, the bar has been committed to increasing its diversity. That report concluded, “an objective assessment leads to the inevitable conclusion that the legal profession remains largely segregated . . .” and called on the bar for further action. Results since are limited at best: In 2000 the Miles to Go Report concludes: “Minority representation in the legal profession is significantly lower than in most other professions . . .; Minority entry into the profession has slowed considerably since 1995 . . .; The distribution of minority lawyers still differs significantly from that of whites . . .; Minority representation in upper-level jobs remains miniscule, especially in the for-profit sector . . .; Progress has been especially slow for minority women in the profession . . .; Minorities in general continue to face significant obstacles to “full and equal” participation in the profession.” The 2004 Report is virtually verbatim.

ABA, ABA Leadership, Office of Diversity Initiatives, http://www.abanet.org/leadership/diversity.html, concludes: “the proportion of minorities in the legal profession is not likely to attain parity with that in the general population in the foreseeable future.”

The bar cannot increase its diversity if the diversity of law school admissions does not change.

Law school admissions for black, Hispanic, and American Indian/Alaskan Natives are flat or decreasing. While black admissions have shown an actual decrease, the larger gap will concern Hispanic students, whose admission numbers are now limited and whose growth in the population is increasing significantly.

These trends are chronic and long-term – black enrollment peaked in the 1995-96 academic year and has fallen short of that high-water mark in every one of the past twelve years; and Hispanic enrollment has remained flat over that period despite the growth of Hispanics in the population as a whole.

In the current climate, the comparatively lower scores on the LSAT and comparatively fewer students with GPAs above the average admit will continue this trend.

The current LSAT spread, combined with the apparent assumptions of law school accreditation and the impact of the U. S. News & World Report means that certain underrepresented minority groups are essentially shut out from law school.

In the most recent six-year period for which data are available, nearly two-thirds of all black applicants and half of all Hispanic applicants have been denied admission by every ABA-approved law school to which
they have applied, compared to just one-third of all Caucasian applicants. This has occurred despite improvements in the entering credentials of these applicants, an increase in the number of law schools and the number of available first-year law school seats, and an increase in both overall law school enrollment and the enrollment of other minority groups.

Data from previous test years indicate that of those who do take the LSAT, only about 6% of black students and 15% of Hispanic students will match or exceed the median for matriculation into ABA-approved law school, also under existing norms.

The pipeline to law school leaks and narrows so severely that, under current operating assumptions and approaches, there are insufficient numbers of qualified (again, under current norms) applicants to approach the diversity of the population by 2028 (the twenty-five year window Justice O’Connor offers in the Grutter litigation, *Grutter v. Bollinger*, 539 U.S. 306 342-43 (2003)).

Assuming the same proportion of lawyers in the population in 2028 as there were in 2000 (.003%), and assuming the population projections, to reach parity would mean that, by rough count, there would need to be more than 150,000 black lawyers and more than 265,000 Hispanic lawyers.

Also at very rough count—looking at numbers of current first graders in each racial/ethnic group, and projected trends outward—there likely would be an insufficient number of black students to approach this rate; for Hispanic students, the law academy would have to lay claim to more than two-thirds of students with qualifying BAs and likely LSAT scores. (Some of them may, of course, choose to be doctors, research scientists, or any of the other professions, which now exceed the bar’s diversity.)

To say that current law school admissions cannot achieve this is an understatement, making parity, as the bar itself has said, unforeseeable.

**What the Education Research Tells Us**

More so than other sources, education data crystallize the enormity of the challenges we face. While the research is clear, identifying what to do with the information and how best to respond is a less precise endeavor.
The achievement gap between white and Asian students and black, Hispanic, and American Indian/Alaskan Natives, starts early, is large, and remains essentially unchanging.

For subjects of particular interest to the legal community, the numbers of underrepresented minorities performing below basic are disturbing and not improving. By way of illustration, on average black seventeen year olds read at the level of thirteen-year-old whites. The numbers for writing, history, and civics show similar patterns for underrepresented minorities.

To put it bluntly, students who cannot read well will not do well in the education system and will not be likely candidates for law school.

The education research, much of it produced by the Gates Foundation, highlights the importance of the new 3Rs—rigor, relevance, and relationships.

The 3Rs are less available on almost every measure to students in high minority/low income schools, resulting in a system that places students at risk.

Underrepresented minority students have fewer qualified teachers, fewer counselors, and fewer opportunities for rigorous course work.

Fewer underrepresented minority students participate in gifted programs or take AP courses; and more are tracked into general curricula (compared to academic).

The achievement gap is evident in national tests, showing more underrepresented minority students scoring below basic, and fewer scoring as college-ready.

Underrepresented minorities are often less well advised, and less likely to attend college. Those who do attend college are more likely to need remediation and thus more likely to drop out. In general terms, their comparative college GPAs will be lower, as will their LSAT scores.

Improving the equitable availability of rigorous and relevant curriculum and relationship support can narrow the achievement gap and repair the pipeline so that a larger pool of students approaches the law school gates.

Improving the availability of these new 3Rs is consonant with the existing strengths of the law community.
Change cannot happen in a short time horizon. While individual stellar success stories may come from short interventions, real repair and widening of the pipeline (and parallel closing of the achievement gap) require intense and sustained work over time. (Education research and the experience of those law pipeline programs that have documented their work bear this out.)

Change cannot happen in a “splash and dash” environment, nor can it happen in a system that does not evaluate and inform and re-inform its work. That participants “love” the programs they are doing can no longer carry the day.

The “New 3Rs” – An Ideal Paradigm for the Pipeline to the Legal Profession

The Gates Foundation has been a key voice in articulating the “New 3Rs.” It is readily apparent that the legal profession is uniquely positioned to fully embrace and promote this doctrine.

“Relationships: all students need adult mentors who know them, look out for them, and push them to achieve.”

The legal community has a great capacity—and indeed has already shown this in some of its programs—to provide intellectual capital and human resources to establish and support relationships with students as mentors, teachers, internship supervisors, and the like.

“Relevance: courses and projects must spark student interest and relate clearly to their lives in today’s rapidly changing world.”

One look at the newspaper, the Supreme Court’s docket, or today’s TV listings shows that the law offers engaging relevant subject matter.

“Rigor: all students need the chance to succeed at challenging classes, such as algebra, writing, and chemistry.”

The law’s curricula and established teaching methodology—its "signature pedagogy"—by definition promotes rigor and sustains high expectations.
Results: sometimes listed as a fourth R, suggesting the need to measure, evaluate, and re-inform pipeline work based on the data. This is an area where the work of the law community (and others) has been limited. (emphasis supplied)

Pipeline Programs – Where Next For Success?
There are many pipeline programs in the legal community—hundreds list themselves in the ABA/LSAC Pipeline Diversity Directory. The programs range along a continuum from Law Day and related events, to camps, to full law-themed high schools. The volume of programs, however, has so far produced very little actual progress or change. We need to ask ourselves why the bar has not been more successful in its outreach for diversity.

Almost none of the existing programs, even the most popular, are evaluated, even at the basic levels of number of students, whether participants stay in school, etc. (By way of comparison, some evaluated programs show numbers of participants starting the program [including race, ethnicity, socio-economic status], number of participants completing the program, program-specific pre and post-tests and surveys, comparative scores on other testing regimes, number of students persisting in school, number of students graduating from high school, number of students applying to college, etc.)

Most of the existing programs are individual and isolated, and are not in a position to share resources or lessons learned.

Most of the existing programs lack explicit diversity goals and many lack a research-informed agenda.

Other professions have been involved in the pipeline longer and evaluated their work; the health professions offer a good resource to the legal community in this regard.

What Do Successful Pipeline Programs Have In Common?

Successful pipeline programs share a number of common features. While by no means an exhaustive list, these characteristics are key components of success.
They recognize the education reality and the depth of the issues dividing underrepresented minorities (black, Hispanic, and Native American students) from their white and Asian peers.

They have clear and stated diversity goals.

They are involved with students in intense or extended ways.

They involve more than one segment of the pipeline—high school students with law students, with law firms.

They emphasize and value partnerships.

They focus on the significance of high expectations and aspirations and incorporate the new 3Rs.

They track their participants and their results, using their data to form and re-inform their work.

**Promoting Successful Pipeline Interventions – How the Bar Can Help**

The organized Bar can be powerful advocates for strengthening the educational pipeline to the legal profession. The legal profession has a natural affinity with many of the pressing issues of the educational pipeline and is ideally suited to be a powerful change agent.

Advocate a laser-focused approach to the pipeline while highlighting the leaks in the pipeline and acknowledging their impact on the future diversity of the profession; that is, use the powerful voice of the legal profession to make clear that real change in the diversity of the profession depends on the future educational outcomes of today’s first graders.

Seek out those pipeline programs that have demonstrated records, recognize their achievements, and advocate for their being replicated. These programs should, as much as possible, impact all points of the pipeline, from early education, to middle and high school, and beyond.

Provide funding, in kind donations, or other supports for proven programs.

Adopt schools and partner with them on a long-term basis.

Look to other professions as inspiration and potential partners on pipeline diversity efforts.
Note from Professor Redfield on sources and further citation: The background and all sources for the data in these comments appear in Dean Nussbaumer’s presentation at the AALS meeting in 2009, Progress? The Academy, Profession, Race and Gender: Empirical Findings, Research Issues, Potential Projects and Funding Opportunities and in Professor Redfield’s book, Diversity Realized: Putting the Walk with the Talk for Diversity in the Pipeline to the Legal Profession (Vandeplas 2009). While some background charts are appended, for ease of reading further citation and attribution have been omitted; all specific tables, program descriptions, and citations are available on request.