

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****August 7-8, 2006****RECOMMENDATION**

RESOLVED, That the American Bar Association urges the National Conference of Bar Examiners and urges all state and territorial bar associations to collaborate with that state or territory's bar examiner to ensure that the bar examination does not result in a disparate impact on bar passage rates of minority candidates.

FURTHER RESOLVED, That the American Bar Association urges the Law School Admission Council and all state, territorial and local bar associations to collaborate with accredited law schools to combat high rates of minority student attrition and to ensure that admission policies do not result in a disparate impact on acceptance rates of minority applicants.

FURTHER RESOLVED, That the American Bar Association urges all state, territorial and local bar associations to collaborate with colleges and universities to develop and support pre-law programs that will increase minority applications to law schools and will increase the readiness of minority applicants for law school.

FURTHER RESOLVED, That the American Bar Association urges all state, territorial and local bar associations to collaborate with elementary and secondary schools to develop and support programs that will increase minority applications to college and will increase the readiness of minority applicants for college.

REPORT

The American Bar Association has long held that diversity of the legal profession is essential for the maintenance of our system of justice. As the following report will show, however, it will be impossible to achieve true diversity at the current rate of matriculation into the profession. The minority representation in the United States population continues to grow. The disparity between the minority representation in the legal profession and the minority representation in the United States population is considerable, and that gap continues to grow. The current graduation rate from accredited law schools will not reverse this disparity. The current application pool of minority candidates to law school will not reverse this disparity. The current applicant pool of minority candidates to colleges and universities with an interest in the legal profession will not reverse this disparity. The pipeline into the profession must be strengthened and filled to diminish this disparity.

On November 3-5, 2005, the American Bar Association together with the Law School Admissions Council sponsored a Pipeline Diversity Conference to address the best ways to strengthen the pipeline. This resolution is the result of the findings of that conference.

I. RECOGNIZING THE PROBLEM

Many professions and businesses have recognized that a diverse workforce benefits clients, the workforce itself, and the general population. They also recognize that diversity in highly skilled or professional positions requires investments in minority youth who form the “pipeline” to the workforce. Yet, while other professions have implemented diversity pipeline programs for decades, the legal profession has largely remained disengaged from this effort, causing it to lag behind. Even well-intentioned employers cannot recruit the requisite numbers of attorneys of color if they are fighting over the same diminishing pool of candidates, culled from a system of legal education that is failing to enroll and graduate sufficient numbers of the best and the brightest members of our ethnic communities.

Former American Bar Association President Dennis Archer puts the need for diversity in our profession into the most basic terms:

Too often, where white people see justice in our legal system, people of color see justice short-changed. When you recognize that in the United States, it is the ability to petition our courts for fairness that keeps people from seeking justice in the streets, then you understand that diversity in the legal profession is critical for democracy to survive.¹

¹ Remarks at ABA Council on Racial & Ethnic Justice Conference “Diversity in the Legal Profession: Opening the Pipeline,” Oct. 22-23, 2003, in Washington, DC.

A. The Racial Divide

While racial and ethnic minorities make up approximately 30% of the U.S. population, they make up less than 15% of the practicing attorneys in this country.² This racial divide will only become greater, as statistics project that by the year 2050, the United States will nearly be a “majority-minority” country, and the Latino population will exceed all of the other minority populations combined; a true demographic sea change.³ Achieving a student body reflective of the population’s exact racial proportions is not necessarily the goal of the legal academy or the profession, but it is instructive to compare the racial/ethnic composition of the U.S. population to the percentage of minorities in law school and the profession. Law school enrollment in 2003-04 consisted of 20.3% racial and ethnic minorities, which represented a slight drop from the previous year.⁴ Contributing to this disproportion is the phenomena that at each step of the way, the pipeline for minority students—from pre-kindergarten into the legal profession—is leaking. Many reputable, research-oriented organizations and individuals have studied the racial/ethnic disparities in the educational pipeline. Gleaning from their reports and statistics, this brief overview highlights the pipeline problem facing the legal academy and the profession.

B. Pre-Kindergarten to Law School

Children as young as three years old already experience disparate problems as students in pre-kindergarten programs. One study⁵ reported that African-Americans attending state-funded pre-kindergarten were almost twice as likely to be expelled as Latino or white children, and boys of all colors and ethnicities were expelled at a rate more than 4.5 times that of girls.

High school is another point in the pipeline for which documentation of a differentiation exists for minorities. A 2004 report from The Civil Rights Project at Harvard University found that white high school students had a 74.9% graduation rate, compared to a 50.2% high school graduation rate for blacks. At 51.1%, graduation rates for American Indian high school students were slightly above blacks, while Hispanic students were at 53.2%. Asian/Pacific Islander students had the

² UNITED STATES CENSUS BUREAU, CENSUS 2000, *available at* www.census.gov/main/www/cen2000.html; COMM’N ON RACIAL & ETHNIC DIVERSITY IN THE PROFESSION, AM. BAR ASS’N, STATISTICS ABOUT MINORITIES IN THE PROFESSION FROM THE CENSUS (2000), *available at* www.abanet.org/minorities/links/2000census.html. The statistics referenced in this article cover different time periods and are drawn from several sources, including the United States Census and the American Bar Association. Recognizing that there is some debate over which groups should be included in which racial/ethnic categories—e.g., whether “African-American” includes Caribbean blacks who live in the United States—this report uses the descriptive categories that the respective original source used.

³ BLACKWELL, KWOH, AND PASTOR, SEARCHING FOR THE UNCOMMON COMMON GROUND 22 fig.1-1 (2002).

⁴ ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 8 (2004), *available from* American Bar Association Commission on Racial and Ethnic Diversity in the Profession.

⁵ WALTER S. GILLIAM, YALE UNIV. CHILD STUDY CTR., PRE-KINDERGARTENERS LEFT BEHIND: EXPULSION RATES IN STATE PRE KINDERGARTEN SYSTEMS 6 (2005).

highest high school graduation rate, at 76.8%.⁶

From high school graduation to college we lose considerable numbers of minority students—in higher proportions than their white counterparts. For example, 64% of white high school graduates in 2001 immediately enrolled in college. For that same year, 55% of black students attended college right after high school.⁷ Minority students do, however, regain some ground when overall college enrollment rates are considered.

College enrollment rates have been increasing steadily among high school graduates from all racial-ethnic groups, so that by 1998, just over 68% of the white population between 18 and 24 had been enrolled in (four-year) college for one or more years. Because African-American and Hispanic high school graduates do not enter four-year colleges at the same rate as their white peers, the comparable percentages of African-American and Hispanic 18-to-24 year olds that had been enrolled in college for at least one year were 62 and 53.⁸

Examining the distribution of college degrees awarded provides another snapshot of the racial/ethnic disparity. For academic year 2002-03, white/non-Hispanic college students received 70% of the Bachelor of Science degrees conferred in Title IV degree-granting institutions. Black/non-Hispanic students earned 8.7% of college degrees that year; with comparable rates of 6.3 for Hispanics; 6.2% for Asian/Pacific Islanders; and 0.7 for American Indian/Alaska native.⁹

Another leaky portion in the pipeline is college matriculation through graduation. A 2005 report from the National Center for Education Statistics found that only 38.5 % of black (non-Hispanic) students at 4-year colleges graduated “on time.” Hispanic students graduated at a higher rate, 43.5%, but Asian/Pacific Islander students had the highest college graduation rate at 63%, while white (non-Hispanic) had a 57.3% college graduation rate.¹⁰ As is too often true, the male students of color fare even worse. In that same NCES study, only 32.8% of African-American men who started college graduated in the standard time period, compared to 40% of Hispanic men, 54.4% of white men, and 59.6 of Asian men.¹¹

⁶ GARY ORFIELD ET AL., LOSING OUR FUTURE: HOW MINORITY YOUTH ARE BEING LEFT BEHIND BY THE GRADUATION RATE CRISIS (2004). A joint release by The Civil Rights Project at Harvard University, the Urban Institute, Advocates for Children of New York, and the Civil Society Institute; accessible from www.civilrightsproject.harvard.edu/.

⁷ See generally National Center for Education Statistics Website at <http://nces.ed.gov/> [hereinafter NCES Website].

⁸ GITA Z. WILDER, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION I (2003), accessible from www.lsacnet.org (click on “Research Reports”).

⁹ See generally NCES Website.

¹⁰ L.G. KNAPP ET AL., ENROLLMENT IN POSTSECONDARY INSTITUTIONS, FALL 2003; GRADUATION RATES 1997 & 2000 COHORTS; AND FINANCIAL STATISTICS, FISCAL YEAR 2003 (NCES 2005-177). U.S. Dept. of Education. Washington, DC: National Center for Education Statistics.

¹¹ *Id.* at 12.

The process for recruiting ethnically and racially diverse students into post-secondary educational institutions faces even greater challenges in states that ban affirmative action in public schools. The University of California system overall admitted 3,400 fewer students in the fall of 2003 and rerouted 7,600 more would-be first-year students to community colleges. The lower admission numbers have hit underrepresented minorities the hardest. The most striking drop was among African-American student applicants, whose admission numbers were down 15% from the 2002 admission year. As of late spring 2004, only 98 African-American students had registered for fall re-enrollment, out of an expected class of 3,821 at University of California at Berkeley. Data shows that the overall campus-wide drop in African-American students was followed by a 9.2% decrease for Native American students, 3% for Latinos, and 2% for Asian-Americans.¹²

C. Law Schools and Students of Color

The crisis in the pipeline to the legal profession continues in disproportionately lower application, enrollment, and graduation rates of minorities in U.S. law schools. In fall 2004, Caucasian/white students made up nearly 65% of all applicants to ABA-accredited law schools. That same group of applicants consisted of 10.6% African-Americans; 8.5% Asians, and 7.9% total for the combined Hispanic groups (Chicano/Mexican American, Hispanic/Latino, and Puerto Rican).¹³ The comparison of minority law school applicants to actual first-year enrollment reveals a slight increase in the percentage of students of color for most groups. Consider the 2004 statistics:

2004 MINORITY LAW SCHOOL APPLICANTS & FIRST-YEAR ENROLLEES¹⁴

| | Total applicants | % of all applicants | Total 1 st year | % of all 1 st year |
|----------------------------|------------------|---------------------|----------------------------|-------------------------------|
| All Minorities | 27,992 | 28.0% | 10,694 | 22.0% |
| African-American | 10,674 | 10.6% | 3,457 | 7.2% |
| Hispanics (combined) | 7,969 | 7.9% | 2,868 | 5.9% |
| Asian/Pac. Islander | 8,568 | 8.5% | 3,982 | 8.2% |
| Amer. Indian/Alaska Native | 781 | 0.8% | 387 | 0.8% |

Nonetheless, the numbers of matriculating law school students of color is—modestly put—disturbing. Between the years 2000 and 2004, the number of first-year African-American law students rose from 3,402 to 3,457; a mere 1.6% increase (55 students) in a four-year period. The

¹² Jerrod Thompson-Hicks, “Minority Admits Down in UC System; Groups Say Regent Using Asians as ‘Pawns,’” June 9, 2004, available at www.civilrights.org.

¹³ LAW SCH. ADMISSION COUNCIL, LSAC VOLUME SUMMARY BY ETHNIC AND GENDER GROUP, available at www.lsacnet.org.

¹⁴ ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, LEGAL EDUCATION STATISTICS, available at www.abanet.org/legaled/statistics/minstats.html.

numbers of matriculating Latino students, from all subgroups, remains very small in relationship to their increasing numbers in the overall general population. In 2004, there were fewer than 400 Native Americans matriculating to law school nationally. Asian Americans represent the only real gains in matriculants, with a first-year law school enrollment increase of more than 36%, going from 2,924 in the year 2000 to 3,982 in 2004.¹⁵

Once the minority students have entered law school, the next point along the pipeline to examine is enrollment. In the past decade, minority law school enrollment has hovered around 19-21% of all law school students. Interestingly, there was a notable one-year increase from 1993-94, when minorities were 17.8% of law school students, to 1994-95, when they made up 19.1% of law students. Such a sizeable increase in percentage points has not happened since then. In the past ten years, the net improvement of minority law school enrollment has inched up from the 19.1% in 1994-95 to 28% in 2004-05. Yet, the news for African-American students is not as encouraging. In the past decade, the highest enrollment for African-Americans was 7.5% of all law school students, both in 1994-95 and 2000-01. In 2003-04, the percentage of African-Americans dipped to a 13-year low, with a representation of only 6.6% of all law school students. The next year (2004-05) the comparable statistics did increase four percentage points, to 10.6%. Hispanic and Native American enrollment has held relatively steady in the past few years, around 7.9% and 0.8% respectively.¹⁶

Asian-Americans have seen a steady increase in both their number and percentage of law school enrollment since 1997-98. In 2003-04, for the first time, the percentage of Asian-American law students surpassed the percentage of African-American students.¹⁷ In 2004, the percentage of Asian-Americans was considerably larger than any other minority group at some law schools. For example, at Western State University in California, 21% of the minority students admitted was Asian-American; at Santa Clara University (CA), the percentage was 28%. The greatest percentage of Asian-Americans in a U.S. law school exists at the University of Hawaii, with 61%. Yet, not all law schools experience such high percentages of Asian Americans. For example, at the University of Missouri and the University of Maine, the percentages of Asian American law students are considerably lower: 4% and 3%, respectively.¹⁸

Unfortunately the pipeline constricts further during law school due to a higher attrition rate for racially and ethnically diverse law students than that of white law students. It is commonly noted that minority law students have a higher attrition rate, but pinpointing specific statistics can be challenging.

National data about persistence in law school are difficult to come by and often must be

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *America's Law School Diversity Index*, 2004, U.S. NEWS & WORLD REPORT.

inferred by juxtaposing information from different sources. Since attrition is the obverse of persistence, one approach is to examine enrollment figures—supplied by the ABA—for first-, second-, and third-year students in three successive years. The difference between one year’s enrollment figures and those of the previous year can be considered attrition.¹⁹

The inferred attrition rate for students entering law school in 1998 affirms the anecdotal evidence: minorities leave law school before securing their J.D. at a faster rate than their white counterparts.

ATTRITION: PERCENT OF FIRST YEAR STUDENTS REMAINING IN LAW SCHOOL²⁰

| | 2 nd year, % remaining | 3 rd year, % remaining |
|----------------------------|--------------------------------------|--------------------------------------|
| All Minorities | 86.8% | 84.7% |
| African-American | 83.5% | 79.3% |
| Hispanics (combined) | 87.3% | 86.2% |
| Asian/Pac. Islander | 91.2% | 90.9% |
| Amer. Indian/Alaska Native | 81.4% | 80.3% |
| White | 93.6% | 91.2% |

D. LSAT and the Bar Exam

According to many experts, the test score gap between people of color (especially African-Americans) and majority students begins as early as the fourth grade.²¹ This gap continues through college entrance examinations at the undergraduate and graduate level. Because the gap is so large, test scores are another point of leakage on the diversity pipeline. While the LSAT remains a reliable predictor of success in law school and the Law School Admission Council (makers of the LSAT), warn against over-reliance on numerical qualifiers alone,²² low-scoring test takers do not have the same probability of being admitted as high-scoring candidates.

Comparable to the test to enter law school, the exam at the end of law school reveals another juncture in the pipeline that stymies aspiring attorneys of color. Bar passage rates for racially diverse law students are generally lower than whites, but the vast majority of all students who take the bar exam do eventually pass. The oft-cited 1998 LSAC National Longitudinal Bar Passage Study found that 94.8% of all students in the research group eventually passed the bar. Blacks had

¹⁹ WILDER, *supra* note 9, at 20.

²⁰ *Id.* at 21.

²¹ CHRISTOPHER JENCKS AND MEREDITH PHILLIPS, eds. *THE BLACK-WHITE TEST SCORE GAP* (1988).

²² LAW SCH. ADMISSION COUNCIL, *CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES* (1999), available at www.lsacnet.org/lisac/publications/CAUTIONARYPolicies2003.pdf.

the lowest percentage rate, 77.6%, while Asian Americans, at 91.9%, had the highest among minority groups. White students in this study passed the bar exam at a 96.7% rate.²³

Spotlighting more recent statistics for one state bar shows much lower passage rates for all groups. In California, 68.8% white first-time bar exam takers passed the July 2004 exam, while 37.4% African-Americans passed, 49.4% Latinos passed, 61.4% Asian-Americans passed and 48.4% of other minorities passed.²⁴ The passage rates for the July 2005 California Bar Exam, continue to display this disparate trend: 69.1% of the white first-time test takers passed. However, the pass rate for African-Americans was 33.8%; for Hispanics, 48.8%; for Asians, 61.7%; and for other minorities, 53.3%. It should also be noted that not only are the percentages low, but the absolute numbers of graduates who take the exam are disappointingly low. For the July 2005 California Bar Exam, the total reported number of first-time takers was 3,704 white persons, compared to 198 African-Americans, 477 Hispanics, 818 Asians and 360 other minorities.²⁵ Clearly it is disturbing that such a comparatively low pass rate exists for such a small pool of potential lawyers of color.

E. The Cumulative Effect

Fewer applicants, lower admissions and matriculation rates into law school, higher attrition rates during law school and lower bar passage rates upon completion of law school all contribute to the constriction of the pipeline into the legal profession for students of color. The severe effect of this accumulated leakage is graphically portrayed by the LSAC 2004 presentation in Attachment A.²⁶ The cumulative effect also manifests itself in the racial and ethnic make-up of new lawyers as they secure their first jobs in the profession. Of 30,035 jobs obtained across the country by the 2004 graduating law class, minorities captured 19.7% % of the jobs. By gender, minority men obtained 8.2% of all jobs (white men had 42.5%) and minority women secured 11.5% of all jobs (white women had 37.8%).²⁷

II. MOVING COLLABORATIVELY TOWARDS SOLUTIONS

²³ LINDA F. WRIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY, RESEARCH REPORT 32 (1998). Accessible from www.lisacnet.org (click on "Research Reports").

²⁴ Statistics provided by the California Bar Association, April 2005.

²⁵ *Id.*

²⁶ Included in the presentation "Diversity in the Pipeline to the Legal Profession," Law School Admission Council, 2004 LSAC Annual Meeting and Educational Conference.

²⁷ NATIONAL ASSOCIATION OF LAW PLACEMENT, "Jobs for New Law Graduates—Trends from 1994-2004," accessible from www.nalp.org/content/index.php?pid=143.

Collaboration is the key to the ultimate success of the diversity pipeline project. Conference participants from each of the focus areas repeatedly cited the need for cooperation among and between all groups both directly *and* indirectly related to the pipeline. In order to understand the importance of collaboration to the task at hand it is necessary to view the pipeline as a whole unit or continuum. In so doing, we see that each component of the continuum must feed into the next. No component can exist without its predecessor component. If one component fails to support the next, the continuum ceases to exist. Based on this analogy, the value of collaboration to the pipeline diversity project is clear. There can be no pipeline of diversity into the legal profession without support from the legal academy. If the educational system fails to produce academically prepared students of color, there will be no students of color to guide along the pipeline into the profession.

Building collaborations and working comfortably and successfully within those collaborations is no easy feat. Parties must first share a common goal and agree to collaborate. They may have to step out of their comfort zones and/or give up a little power to accomplish this, which can be a difficult and stressful thing to do. It is essential that collaborating parties develop trusting, non-threatening relationships with each other in order to achieve their common goals. Some groups may require professional team building services to assist them in this endeavor. Once parties have agreed to work together, they must contribute fully, take responsibility for their contributions, and value the contributions of their partners in collaboration.

There are undeniable challenges to establishing strong collaborations. Not every collaborative relationship is successful. The conference participants acknowledged this reality but felt strongly that the goal of pipeline diversity is too important to allow these challenges to derail their efforts.

Conference participants identified several potential collaborators specifically related to the pipeline diversity project and examples of what each one can bring to a collaborative effort:

- Local and state bar associations, corporations, and law firms/*providing bar preparation course scholarships and stipends*
- Law schools and bar associations/*keeping records of bar exam passage rates based on race and sex*
- Law firms and corporate legal departments/*providing mentoring, success training, and counseling to associates of color*
- All legal employers/*training managers and staff to identify racism and sexism*
- Law schools and local bar associations/*providing a clearinghouse of job opportunities for lawyers of color who pass the bar exam*
- All law schools/*counseling students on how to be successful law school graduates*
- Law firms and large corporations/*funding, employment opportunities, and mentoring*
- Local, state, national, and minority bar associations/*providing access to other collaborators, leadership, mentoring, and funding*

- Community Colleges/*providing sources of first generation lawyers and Street Law programs*
- Law students/*mentoring*
- Schools, school districts, and state education agencies/*academic programming*
- Foundations/*Funding*
- LSAC/"Got Law" and other programs
- Universities/*faculty in non-legal disciplines*
- Local, state, and federal government offices/*career options, summer internships, and mentoring*
- Judiciary/*clerkship opportunities and mentoring*
- Bookstores, publishers, computer companies/*funding*
- Parents/*student support*
- National student organizations (BLSA, HLSA, etc.)/*student support*
- CLEO, OLIO, PRLDEF, and the American Indian Law Center/*academic support services*
- Law schools and Academic Assistance programs/*academic assistance*
- K-12, college, and law school programs/*identifying students of color interested in the law*
- K-12, college, law school programs, and practitioners/*introducing students to the legal profession, Street Law programs, and mock trials*
- Birth-3, K-12, college, and law school programs/*minority placement*
- High school counselors and law schools/*career awareness and law school admissions process*
- K-12 and parenting organizations/*educational enhancement*

The issue of funding will be an ongoing challenge for the Pipeline Diversity project. Law firms, corporations, bar associations, foundations, and community organizations are the obvious first-line sources for financial support of pipeline programming. Other sources may include colleges and universities, alumni associations, fraternities and sororities, and individual donors. Successful funding of pipeline diversity will require tenacity, creativity, and significant collaborative effort. The acquisition of adequate funding will most likely be tied directly to the ability of stakeholders to educate the community on the benefits of pipeline diversity. This report is intended to be a “first step” toward that goal.

III. APPROACHES TO SOLVE THE PROBLEM

A. Starting Early

The time to plug a leaky pipeline is before its precious flow seeps away. For the legal academy and the legal profession, that time well precedes law school and ideally would begin in grades K-12. Then, proactive measures have a much better chance of positively impacting minority preparation for and progress through college and law school. In fact, the pervasive nature of the problem suggests that the legal academy and the profession may need to consider participating in collaborations that address the achievement gap even before kindergarten. Disparities in school preparation begin before children enter elementary school. Research has found that African-American and Hispanic children are more likely than white or Asian children to enter kindergarten with fewer school-related skills.²⁸

To further illustrate the need to start early, California provides another example of K-8 disparities. School performance in California is measured by a standardized test from the Academic Performance Index. Schools ranking in the lowest 30% are considered “low-performing.” Only 10% of white elementary students in California attend low-performing schools. In contrast, 52% of Hispanic and 43% of African-American students attend low-performing schools in that state. A low teacher-to-student ratio also adversely affects student performance. In California, Hispanic and African-American children are much more likely than white students to be in overcrowded schools.²⁹

While some in the legal academy and legal profession may find it daunting to extend their outreach efforts across the educational chasm all the way back to pre-kindergarten and elementary school, professionals in all aspects of the law must at least increase their presence in initiatives targeted towards high school and college students of color. Research and statistics clearly show that if we wait until law school to implement effective outreach, the pool of racially and ethnically diverse

²⁸MARGARET BRIDGES et al., “Preschool for California’s Children: Promising Benefits, Unequal Access,” POLICY BRIEF, POLICY ANALYSIS FOR CALIFORNIA EDUCATION, University of California, Berkeley and Stanford University, at 118 (September 2004), U.S. Dept. of Education.

²⁹ DEBORAH REED, “Educational Resources and Outcomes in California, by Race & Ethnicity,” CALIFORNIA COUNTS Vol. 6:3 at 9; *accessible from* the Public Policy Institute of California Website, www.ppic.org/main/home.asp.

students is too small to produce a sufficient flow of new lawyers of color.

B. Address the Perspective That the Law is the Enemy

In general, Americans don't like lawyers. Both 1998 and 2002 ABA research projects, as well as other previous studies, found that "the legal profession is among the least reputed institutions in American society."³⁰ Within the context of this American cultural distaste for lawyers, people of color often hold even more negative perceptions of the U.S. justice system due, in part, to their own (or someone they know) encounters with the system. Racial profiling, over-representation of minorities on death row and in the juvenile justice system, or any number of other recent news topics serve as fodder for many minorities' belief that the "law is the enemy." Thus, effective outreach to some students of color, particularly those in the lower socio-economic levels, may need to address this potential perspective and seek to show the students how law can be a tool for justice.

C. Use & Misuse of LSAT Scores

The troubling relationship between LSAT achievement and students of color bears further examination. As with other types of tests, there is a significant achievement gap between minority students (particularly African-Americans) and white students relative to LSAT scores. The gap is so substantial that the LSAT represents another major point of leakage on the diversity pipeline. The LSAT is considered to be a reliable predictor of law school success and first-time bar exam passage.³¹ Accordingly, applicants who score low on the LSAT have a lower probability of law school admission than their high-scoring counterparts.

Some suggest that because LSAT success is such a strong indicator of success on the bar exam, many ABA-accredited law schools are less willing to admit or "take a chance" on students of color (who often perform poorly on such tests) for fear of jeopardizing their accreditation and bar passage rankings. Likewise, they argue, new law schools desiring to serve minority communities are unable to obtain accreditation because of their admission of low-scoring students. In their opinion, what results is a chilling effect on the admission of minorities into ABA-accredited law schools, which serves to further constrict the diversity pipeline.

Contrary to this opinion, the ABA Accreditation Committee maintains that law schools do not risk loss of accreditation for simply admitting low LSAT-scoring applicants, particularly when such schools provide sufficient academic assistance and bar prep support to those students, bettering their chances for a successful academic outcome and first time passage of the bar exam. Only those law schools that fail to meet the academic and bar preparation needs of their students, resulting in high attrition rates and low bar passage rates, are at risk of losing their accreditation status. The

³⁰ ABA SECTION OF LITIGATION, "Public Perceptions of Lawyers: 2002 Consumer Research Findings," *available at* www.abanet.org/litigation/lawyers/home.html.

³¹ ABA SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, "Addressing Misperceptions Concerning the Use of LSAT and Bar Passage Data in the Accreditation Process, 2005 at B. 1.

ABA cites Accreditation Standards 301(a) and 501(b), which state, respectively:

A law school shall maintain an educational program that prepares students for admission to the bar and effective and responsible participation in the legal profession.

A law school shall not admit applicants who do not appear capable of satisfactorily completing its educational program and being admitted to the bar.

The ABA Accreditation Committee is careful to state that LSAT scores are merely an indicator of success, and that the committee does not apply the latter standard to require non-admission of low-scoring students. This is an extremely contentious issue that will not be resolved easily. It is clear, however, that the controversy around the LSAT represents yet another significant hurdle for students of color to overcome.

The law school admissions process and LSAT scores continue to be entrenched barriers at the law school level. Conference participants identified the following strategies to overcome the barriers at this level. These include:

- tying LSAT scores to ultimate bar passage instead of first-time bar passage
- de-emphasizing the importance of LSAT scores by discontinuing the practice of reporting scores to US News and World Report magazine
- requiring law schools to include LSAT scores for transfer students and first year students in their reporting
- opening a transparent dialogue with the ABA Accreditation Committee with regard to determining an acceptable rate of student attrition and bar passage

D. Other Issues for Law School and Beyond

Another stumbling block that surfaces at this point on the pipeline is the inability (or unwillingness) of many law schools to create and foster an inclusive and welcoming environment for minority students. This leads to feelings of isolation among students of color, which has a direct impact on attrition rates. Possible solutions include:

- retaining a diversity consultant or opening a campus office of diversity to assist school administrators and staff in targeted planning on diversity related issues
- providing diversity training to all students in conjunction with first-year orientation programs
- making diversity a stronger factor in accreditation considerations

The institutional barriers to success in the transition phase (the period between law school

graduation and the successful acquisition of legal employment) must also be addressed. The most daunting of these barriers are passing the bar exam and securing employment. Yet, these, too, can be overcome if the legal academy and profession take the following proactive steps:

- jointly sponsoring supplemental bar exam preparatory workshops, such as Minority Legal Education Resources, to strengthen test-taking techniques and writing skills
- underwriting the costs of such workshops through scholarships and grants
- providing students of color with job search and placement assistance (particularly those who are not in the top 25 percent of their class and do not have access to on campus interviewing)
- promoting and encouraging affirmative outreach efforts within law firms and other legal employers to increase the job opportunities for minority students
- creating and supporting programs aimed at the recruitment and retention of minority associates in law firms
- offering financial assistance in the form of stipends to students of color as they seek employment

E. The Value of Personal Contact

Students of color must be exposed to effective mentoring and networking programs at all points along the pipeline continuum, starting at the kindergarten level. Such programming should become more intensive as students progress along the pipeline. Mentoring and networking programs aimed at students of color should be multi-faceted and offer:

- successful and committed mentors and role models who can guide students of color, keep them focused on their goals, offer encouragement, and provide recommendations, introductions, and access to important networks
- intervention programs for at-risk minority students aimed at drop-out prevention and promoting the value of education and academic achievement
- services to educate minority parents on the educational opportunities and financial and educational resources available

- career awareness services that provide information about the law and expand students' knowledge of the legal system's positive role in society. Such programming should be targeted at students' specific interests. For example, students interested in science can be introduced to the field of patent law; students interested in sports and entertainment can be introduced to sports and entertainment law, etc.
- character education workshops that encourage students to make positive life choices from an early age
- extra-curricular and summer enrichment activities that provide opportunities for students to visit law schools and meet minority law students. Such immersion activities give students a realistic view of life as a law student and can help plant the seed or vision that attending law school is an attainable goal
- extra-curricular and summer enrichment activities, such as job shadowing, that provide students of color with the opportunity to visit law firms, government offices, and court buildings and meet practicing lawyers and judges. Again, such activities reinforce the idea that the law is an attainable profession
- assistance to students in developing pre-law clubs and other law-related activities
- quality pre-law counseling services to aid students of color in proper course selection, obtaining financial assistance and scholarships, and understanding the importance of character and fitness, leadership, and community involvement in preparation for admission to law school
- career planning assistance with regard to obtaining clerkships, internships, and employment
- services to track the progress of students of color beginning in their first year of law school and going forward through their acquisition of employment
- assistance to students of color in preparing for the bar exam
- exposure to information and experiences that will help students of color become well-rounded and culturally adept
- workshops on developing effective job interview skills
- assistance to students of color in obtaining financial support while they prepare for the bar exam so that students can devote their undivided attention to their studies without financial worry. This support should cover the costs of bar review courses, living expenses, and bar exam fees
- opportunities to participate in practice-oriented and minority organizations on campus, alumni associations, bar associations, and other organizations such as the Inns of Court
- career planning and resume building services

F. Academic Assistance at All Levels

In order to make the pipeline into the profession a successful reality, it is essential that students of color have access to the best academic assistance and support available. Academic programming should be flexible enough to meet the needs of *every* student at *every* grade level. Collaboration between the various components of the pipeline must be encouraged if students are to benefit. Academic assistance can take the form of:

- sustained development of reading, writing, comprehension, math, and critical analysis skills at every grade level to ensure promotion
- tutoring services to strengthen core academic (reading, writing, math) and test-taking skills
- remedial support (when necessary)
- mandatory summer school
- extra-curricular and summer enrichment programs
- skill building in specific areas such as writing, comprehension, and critical thinking
- career academic services that teach students how to plan their educational careers into the future through course selection, prerequisite coursework, etc.
- programs and activities that teach logic and reasoning
- test prep services
- academic Success programs in law school
- performance tracking of first-year law students

IV. THE FUTURE

Beyond the moralistic responsibility, it also makes good business sense for the legal profession to invest time and resources in the diversity pipeline. Law firms, corporate legal departments, government, and the judiciary cannot recruit attorneys of color who do not exist. Diversity efforts will encounter inherent obstacles as long as there remain too few people of color who decide to enter the profession in the first place. Forward-thinking legal employers have already accepted this reality, and label their diversity pipeline “donations” as recruitment expenses.

To fully maximize its efforts, the legal academy and the profession must tap into the power of collaboration. Effectively reaching elementary (or earlier), high school, and college students requires working closely with educators who are on the front lines with these students. Fortunately, many education-related individuals, institutions, associations and organizations are already addressing these issues. The legal academy and the legal profession—from law schools and bar associations to judges and senior lawyers—must now lend their collective weight to help make a

difference.

Respectfully Submitted,
Evet L. Simmons, Chair
ABA Presidential Advisory Commission on Diversity in the Profession
August 2006

GENERAL INFORMATION FORM

Submitting Entity: ABA Presidential Advisory Council on Diversity in the Profession

Submitted by: Evett L. Simmons, Chair

1. Summary of Recommendation(s).

The Recommendation urges the American Bar Association and all state, territorial and local bar associations to work with national, state and territorial bar examiners, law schools, universities and elementary and secondary schools to address significant problems facing minorities within the pipeline to the profession.

2. Approval by Submitting Entity.

The Recommendation was approved by the ABA Presidential Advisory Council on Diversity in the Profession in February 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes, the ABA has a strong history of promoting diversity in the profession.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The ABA created the Legal Opportunity Scholarship in 2000 and created the ABA Presidential Advisory Council on Diversity in the Profession in 2000 in order to promote strengthening the pipeline into the profession. This recommendation would enhance that goal by seeking to involve all state, territorial and local bar associations in the effort.

5. What urgency exists which requires action at this meeting of the House?

Action is timely.

6. Status of Legislation

N/A

7. Cost to the Association

None

8. Disclosure of Interest

N/A

9. Referrals.

The report and recommendation have been referred to every entity represented in the House of Delegates.

10. Contact Person

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