

THE CRITICAL NEED TO FURTHER DIVERSIFY THE LEGAL ACADEMY & THE LEGAL PROFESSION

ABA Presidential Advisory Council on Diversity in the Profession¹
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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 (the first African-American ABA President) 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.²

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.³ 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.⁴ 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

¹ The views expressed herein have not been presented to or approved by the American Bar Association House of Delegates or the Board of Governors, and therefore, should not be construed as representing ABA policy.

² Remarks at ABA Council on Racial & Ethnic Justice Conference “Diversity in the Legal Profession: Opening the Pipeline,” Oct. 22-23, 2003, in Washington, DC.

³ 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.

⁴ BLACKWELL, KWON, AND PASTOR, SEARCHING FOR THE UNCOMMON COMMON GROUND 22 fig.1-1 (2002).

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.⁵ 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 and four years of age already experience disparate problems as students in pre-kindergarten programs. One study⁶ 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 highest high school graduation rate, at 76.8%.⁷

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.⁸ 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 53.⁹

⁵ 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.

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

⁷ 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/.

⁸ *See generally* National Center for Education Statistics Website at <http://nces.ed.gov/> [hereinafter NCES Website].

⁹ GITA Z. WILDER, THE ROAD TO LAW SCHOOL AND BEYOND: EXAMINING CHALLENGES TO RACIAL AND ETHNIC DIVERSITY IN THE LEGAL PROFESSION 1 (2003), *accessible from* www.lsacnet.org (click on “Research Reports”).

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.¹⁰

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.¹¹ As is too often true, the male students of color fare even worse. In that same NCEES 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.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.¹³

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).¹⁴ 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:

¹⁰ See generally NCEES Website.

¹¹ L.G. KNAPP ET AL., ENROLLMENT IN POSTSECONDARY INSTITUTIONS, FALL 2003; GRADUATION RATES 1997 & 2000 COHORTS; AND FINANCIAL STATISTICS, FISCAL YEAR 2003 (NCEES 2005-177). U.S. Dept. of Education. Washington, DC: National Center for Education Statistics.

¹² *Id.* at 12.

¹³ Jerrod Thompson-Hicks, “Minority Admits Down in UC System; Groups Say Regent Using Asians as ‘Pawns,’” June 9, 2004, available at www.civilrights.org.

¹⁴ LAW SCH. ADMISSION COUNCIL, LSAC VOLUME SUMMARY BY ETHNIC AND GENDER GROUP, available at www.lsacnet.org.

2004 MINORITY LAW SCHOOL APPLICANTS & FIRST-YEAR ENROLLEES¹⁵

	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 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 2004.¹⁶

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.¹⁷

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.¹⁸ 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

¹⁵ ABA SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, LEGAL EDUCATION STATISTICS, *available at* www.abanet.org/legaled/statistics/minstats.html.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

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.¹⁹

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 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.²⁰

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 SCHOOL²¹

	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.²² 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,²³ low-scoring test takers do not have the same probability of being admitted as high-scoring candidates.

¹⁹ *America’s Law School Diversity Index*, 2004, U.S. NEWS & WORLD REPORT.

²⁰ WILDER, *supra* note 9, at 20.

²¹ *Id.* at 21.

²² CHRISTOPHER JENCKS AND MEREDITH PHILLIPS, eds. *THE BLACK-WHITE TEST SCORE GAP* (1988).

²³ LAW SCH. ADMISSION COUNCIL, *CAUTIONARY POLICIES CONCERNING LSAT SCORES AND RELATED SERVICES* (1999), available at www.lsacnet.org/lsac/publications/CAUTIONARYPolicies2003.pdf.

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 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.²⁴

Spotlighting more recent statistics for one state bar shows much lower passage rates for all groups. In California, 54.1% white bar exam takers passed the February 2004 exam, while 18.1% African-Americans passed, 22.7% Latinos passed, and 32.2% Asian-Americans passed.²⁵ The passage rates for the July 2004 California Bar Exam, continue to display this disparate trend: 74.6% of the white test takers passed. However, the pass rate for African-Americans was 48.2%; for Hispanics, 53.4%; for Asians, 65.5%; and for other minorities, 61.1%. 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: 2,138 white persons took the July 2004 California Bar, while only 110 African-American did so; 294 Hispanic, 487 Asian and 193 other minorities took the Bar.²⁶ 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.²⁷ 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%).²⁸

²⁴ LINDA F. WRIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY, RESEARCH REPORT 32 (1998). *Accessible from www.lsacnet.org* (click on “Research Reports”).

²⁵ CALIFORNIA BAR JOURNAL, “President’s Column: We’re a Long Way from Full Diversity,” State Bar President Anthony Capozzi, August 2004 at 9.

²⁶ *Id.*

²⁷ Included in the presentation “Diversity in the Pipeline to the Legal Profession,” Law School Admission Council, 2004 LSAC Annual Meeting and Educational Conference.

²⁸ NATIONAL ASSOCIATION OF LAW PLACEMENT, “Jobs for New Law Graduates—Trends from 1994-2004,” *accessible from www.nalp.org/content/index.php?pid=143*.

II. MOVING TOWARDS SOLUTIONS

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.²⁹

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, and in California, Hispanic and African-American children are much more likely than white students to be in overcrowded schools.³⁰

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

B. Removing Impediments to Diversity in Higher Education

1. Improve Skills Measured on Standardized Tests

As noted above, there is a persistent test score gap between students of color and other students on standardized tests for admission to college and graduate and professional schools. Standardized tests are measurements of acquired skills, and one way to improve standardized test scores is to improve the equal access to education for all students—from primary grades through college. Preparation for the skills tested for these examinations cannot be acquired exclusively through coaching courses given in the weeks before tests are administered. Courses that develop skills in

²⁹MARGARET 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.

³⁰ 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.

analytical and logical reasoning as well as reading comprehension must be emphasized from the earliest primary grades.

2. Invest in the Educational Infrastructure

Educational reform has been the mantra of nearly every politician. Indeed, improving American education would go a long way towards relieving inequities in minority opportunities. It is commonly noted that salaries and family earning levels tend to rise in conjunction with education—particularly with college and graduate degrees—for all persons. In a 1999 Gallup poll of 2,006 Americans, including 1,001 African-Americans, 60% responding believed that increasing minority school funding was a better means of assisting the education for students of color than stepping up integration efforts.³¹ To tackle the racial disparities in education, education experts conclude that the following policies must be put into action:

- Equalization of tax revenues by district to ameliorate inequality in spending and outcomes;
- Enhanced teacher training to increase effectiveness with a changing population;
- Equalization of teacher quality across schools through both training programs and financial incentives to attract experienced master instructors;
- Involvement of local communities and parents in school councils;
- Full support for special English language development programs for immigrant students where needed;
- Spending to improve school facilities;
- Increased outreach and affirmative action programs for college admission.³²

Likewise, a significant body of evidence suggests that teacher quality matters greatly to student performance, and that there are sharp inequities in the distribution of skilled teachers by both the income and racial character of student bodies, in part due to concentrating new teachers in schools with higher numbers of poor and minority students.³³

There is generally a reluctance in the older majority population to invest in the children ‘of others,’ widening the chasm between the white and non-white population. For example, in California, educational spending per pupil has dropped in the last decade to the near bottom of all states in the nation.³⁴ The shortsightedness of failing to spend educational dollars on youth of color is enormous: because of their increasing numbers in the population it is exactly these youth who should be generating tax revenues necessary to support the entire population in its retirement. Whether intended or unintended, restrictions on minority progress hurts more than minorities themselves, for the very future of the American economy and society will be based on how well opportunities—both educational and occupational—are opened to all of our nation’s people.

³¹ BLACKWELL ET AL., *supra* note 4 at 148 and 153.

³² *Id.* at 154; K. HAYCOCK, “Good Teaching Matters...A Lot,” THINKING K-16, Vol. 3:2, The Education Trust, 1998.

³³ HAYCOCK, *supra* at 32.

³⁴ BLACKWELL ET AL., *supra* note 4, at 24.

Wiser and increased spending on the education of all of America's children is necessary to equalize decades of inequity, and therefore, increase the diversity pipeline into the legal profession.

3. Address Unemployment Rates and Resulting Child Poverty

Building a leak-proof pipeline for a diverse legal profession must, by necessity, address issues deeper and more far-reaching than educational problems. Economic factors invariably contribute to the dearth of diversity in the legal community.

Unemployment rates historically and presently are higher among persons of color. This affects their advancement in every facet of society and must be considered when evaluating educational incentives. A lack of life essentials—such as housing, shelter, food and clothing—take precedence over pursuing higher education, particularly beyond high school. While the gains of the civil rights movement of the 1960s did increase the median income of African-American families, the increase was not enough to offset the widening gap in the median family income between black and white Americans. Reviewing unemployment rates in recent decades exposes, not surprisingly, the disproportionate number of minorities at or below the poverty level.

After the early 1970s, U.S. statisticians began to recognize the effect of economy on races other than African-Americans. Unemployment statistics by race and ethnicity are available from 1975 as follows:³⁵

1975: 8% White unemployed 12.1% Latino unemployed 14.9% Black unemployed	1990: 5% White unemployed 8.1% Latino unemployed 11.5% Black unemployed
1985: 6.1% White unemployed 10.7% Latino unemployed 15% Black unemployed	2000: 3.6% White unemployed 5.7% Latino unemployed 7.9% Black unemployed

Oftentimes, the children of parents without jobs live in poverty level. Based on the unemployment statistics above, these children are disproportionately children of color. Child poverty rates are an important factor to consider in increasing diversity in the pipeline into the legal profession. One of the standard predictors of academic performance and future earning potential is the poverty of children. From 1996 to 1999, of white children, 11% lived at or below the national poverty level. However, during the same time period, the percentage of minority youth living in poverty was 37% for African-Americans, 35.5% for Latinos, and 17.5% for Asian Americans.³⁶

One of the proffered explanations for the higher rates affecting African-American and Latino children are the higher rates of single female-headed households in those ethnic groups. These families tend to have lower incomes than male-headed homes, primarily because of the lingering gender pay discrimination, as well as the occupational clustering of women in lower-paying retail and service industry jobs. Research from the Public Policy Institute of California has found that

³⁵ *Id.* at 91.

³⁶ *Id.* at 95.

several family factors relate to young children’s educational development, preparation for school, and early literacy. These include having a mother who has completed high school, having a mother who speaks English, living with both parents, and having a family income above the poverty level.³⁷ Parental education, particularly maternal education, is strongly linked to a child’s cognitive development and school success.³⁸ Less than half of young Hispanic children in California have a mother with a high school diploma, and less than 10% have a parent with a bachelor’s degree. African-American, Native American and Pacific Islander children also have low parental education. The percentage of children living with two parents in California is particularly low among African-American children, but is also relatively low among Native American, Hispanic and Pacific Islander children. These same children are also more likely than Asian and white children to grow up in a family with income below the poverty level.³⁹

4. 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.”⁴⁰ 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.

5. Focus on the Loss of Black Males from the Pipeline

Although the pipeline is losing its diverse students at a higher rate than white students, African-American males are lost at the highest and most alarming rates. In many large cities, fewer than 30 percent of African-American boys graduate from high school with their peers.⁴¹ While African-American males only comprise 8.6% of national public school enrollments, they constitute 22% of those expelled from school and 23% of those suspended.⁴² In addition, young African-American men are more likely to be in jail—or otherwise be involved with the court system—than they are to

³⁷ See generally CALIFORNIA COUNTS at Public Policy Institute of California Website www.ppic.org/main/home.asp.

³⁸ ROBERT HAVEMAN AND BARBARA WOLFE, SUCCEEDING GENERATIONS: ON THE EFFECTS OF INVESTMENTS IN CHILDREN 1995.

³⁹ *Id.*

⁴⁰ ABA SECTION OF LITIGATION, “Public Perceptions of Lawyers: 2002 Consumer Research Findings,” available at www.abanet.org/litigation/lawyers/home.html.

⁴¹ Rosa A. Smith, *Black Boys: The Litmus Test for ‘No Child Left Behind,’* EDUC. WEEK, Oct. 30, 2002, at 2 [hereinafter *Black Boys*].

⁴² Rosa A. Smith, *Saving Black Boys: The Elusive Promises of Public Education*, AM. PROSPECT, Feb. 1, 2004, at 1.

go to college.⁴³ Sixty percent of incarcerated youths age 18 and under are African-American, nearly four times their representation in the general population.⁴⁴

The problem of disparate graduation rates of African-American males is concentrated in a few large cities. For example, in New York City, three quarters of the African-American males fail to graduate on time with their peers. In Chicago, less than a third of the African-American male students graduate on time.⁴⁵ Yet, three counties in Maryland (Baltimore County, Montgomery County and Prince Georges County, which together enroll the three largest population of African-Americans in the country: 85,000) show virtually no achievement gap between black males and their peers.⁴⁶ If other school systems could achieve results similar to those in Maryland, a large rift in the pipeline for African-American males would close quickly.

III. MAKING THE LAW SCHOOL EXPERIENCE AN EVEN PLAYING FIELD

Many organizations, educational institutions and individuals are working assiduously not only to plug the leaking diversity pipeline, but also to fill the available pool of qualified and interested students who enter the legal profession.

To better identify the breadth and the depth of pipeline diversity initiatives that already exist, the ABA Presidential Advisory Council on Diversity in the Profession and the Law School Admission Council are collaborating on a major research project: the **ABA/LSAC Pipeline Diversity Directory**. This comprehensive online Diversity Directory will highlight programs along the full spectrum of the pipeline that encourage students of color to prepare for a legal career and equip them to succeed. It will include projects conducted by law schools, law firms, corporations, high schools, colleges, bar associations, independent institutes and organizations. These programs and projects can be used as a model for any like-minded group to emulate their good work. Programs with varying budget requirements will be presented to meet the needs of a variety of interested organizations. The Diversity Directory will be fully searchable by selected criteria, and will be available on the ABA and LSAC Website after November 2005. Entries to the Diversity Directory can now be made online by completing a short survey at www.abanet.org/op/pipelndir/home.html.

IV. THE FUTURE

The profession has a moral duty to develop and implement creative ideas for enhancing the diversity of the pipeline into the practice of law. If every law firm and every law school contributed to this effort in the same way that it contributes time and resources to pro bono representation, for instance, our combined efforts could make a substantial difference. Programs that make a difference might range from individual attorneys acting personally as mentors for

⁴³ *Black Boys*, *supra* note 41 at 2.

⁴⁴ *Id.*

⁴⁵ MICHAEL HOLZMAN, SCHOTT FOUND. FOR PUB. EDUC., PUBLIC EDUCATION AND BLACK MALE STUDENTS: A STATE REPORT CARD (2004).

⁴⁶ *Id.*

college-age, high school, or elementary school students; to emulating successful model programs featured in the ABA/LSAC Pipeline Diversity Directory, to even engaging in political activism at the state, local, and national levels to win support for improved educational opportunities for minority communities.

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 its collective weight to help make a difference.

The problem is obvious. The solutions are not. We are, however, an action-oriented profession of problem-solvers and deal-makers. Let us make this project the most important case on our calendar, the biggest deal pending. The clock is ticking, and we have no time to waste. We can and must join together to make diversity in our profession a reality, rather than an unfulfilled promise.

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