

With a Sense of Urgency: Making Diversity Matter in Law School Admissions

Hazel Weiser

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jcred>

Recommended Citation

Hazel Weiser (2013) "With a Sense of Urgency: Making Diversity Matter in Law School Admissions," *Journal of Civil Rights and Economic Development*: Vol. 27 : Iss. 1 , Article 2.

Available at: <https://scholarship.law.stjohns.edu/jcred/vol27/iss1/2>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of Civil Rights and Economic Development by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

WITH A SENSE OF URGENCY: MAKING DIVERSITY MATTER IN LAW SCHOOL ADMISSIONS

BY HAZEL WEISER*

There have been cyclical crises in legal education—downturns in enrollments with consequential budget cuts and ideological clashes that have torn apart faculties—but the absence of historically underrepresented racial and ethnic grounds within the legal profession remains on-going. The legal academy righted itself regarding gender, at least in admissions, but the lack of racial and ethnic diversity seems to be a constant. What began as a casual conversation about why there are so few students of color enrolled in American law schools¹ turned into a working group,² then a collaborative,³ and less than a year later, the November 11, 2011 program, “Opening Doors: Making Diversity Matter in Law School Admissions.” With over eighty people in attendance, and another 160 log-ins to the web-based simulcast, the “Opening Doors” program launched the Society of American Law Teachers’ (SALT) B.A. to J.D. Pipeline Project, a nationwide effort to engage state bar administrators, law school deans and admissions officers, and pre-law college advisors in a concerted effort to

*Former executive director, Society of American Law Teachers—SALT from September 2007 through June 2012. Currently Assistant Dean for Graduate and Continuing Legal Programs, New York Law School.

¹ Professor Leonard Baynes (St. John’s University School of Law) and I attended the SALT Teaching Conference: Teaching in a Transformative Era: the Law School of the Future, hosted by University of Hawai’i at Mānoa William S. Richardson School of Law, on December 10-11, 2010.

² After the teaching conference, Professor Baynes and I invited Professor Solangel Maldonado (Seton Hall University School of Law), a member of the SALT board of governors and co-chair of the SALT Equal Opportunity Committee to join us in a meeting, which was hosted at Seton Hall. Later we asked Professor Pamela Edwards (City University of New York at Queens School of Law), Director of the CUNY Center for Diversity in the Legal Profession, to join the working group. Sonji Patrick, Director of Education at LatinoJustice PRLDEF, joined the planning discussions at the invitation of Juan Cartegena, President and General Counsel of LatinoJustice.

³ Society of American Law Teachers—SALT; The Ronald H. Brown Center for Civil Rights at St. John’s University School of Law; The Dean’s Diversity Council at Seton Hall University School of Law; Center for Diversity in the Legal Profession at City University of New York School of Law; LatinoJustice PRLDEF; The Institute for Inclusion in the Legal Profession; and American Bar Association Council on Racial and Ethnic Diversity in the Educational Pipeline. Most recently the Leadership Council on Legal Diversity has also joined as a funder and collaborator.

identify and remove the barriers to law school admissions for applicants of color.⁴

This collaborative is rooted in our mutual understanding that the legal academy has not fulfilled its role in furthering civil democracy. The legal profession—lawyers, judges, law professors, general counsel, business leaders, legislators and elected officials, and CEOs—does not reflect who we are as the United States of America in 2013. When we look at the legal profession, it remains mostly white, very male in the upper echelons, and utterly failing to serve the legal needs of the vast majority of ordinary men, women, families, and small businesses. Despite the advances made through the modern civil rights era, law schools remain inaccessible to many students of color, especially African Americans and Mexican Americans.⁵ The paradigm shift in the economics of law practice, leaving many law graduates without jobs and with crushing debt loads, has resulted in a precipitous drop in applicants and applications to law schools. As of August 8, 2013, applicants were down 12.3% nationwide and applications were down 17.9% from 2012.⁶ With declining enrollments, there appears to be an increase in the percentage of African American and Hispanic/Latino law school students, but in actual numbers, the increase is not significant.⁷ The legitimacy of the legal profession and self-government is at stake.⁸

It didn't take us long to articulate the goals of the collaborative. We wanted to highlight the negative impact that *U.S. News & World Report* rankings have on the admission of students of color.⁹ There was consensus

⁴ The B.A. to J.D. Pipeline Project has continued with programs hosted by Florida International School of Law (Oct. 26, 2012), American University Washington College of Law (Feb. 15, 2013), Santa Clara University Law Center (Mar. 15, 2013), University of Houston School of Law (Oct. 11, 2013), and University of Puerto Rico School of Law (Dec. 5, 2013).

⁵ See *LSAC Volume Summary: Matriculants by Ethnicity* [hereinafter *Matriculants by Ethnicity*], available at <http://lsac.org/lsacresources/data/matrics-by-ethnicity> (last visited Oct. 3, 2013) (showing matriculants of underrepresented racial and ethnic groups in smaller proportions than in the population at large); *Embracing the Opportunities for Increasing the Diversity into the Legal Profession: Collaborating to Expand the Pipeline (Let's Get Real), Post-Conference Report* [hereinafter *Post-Conference Report*], available at <http://apps.americanbar.org/op/pipelineconf/PipelinePostReport.pdf> (last visited Oct. 3, 2013) (“The paucity of minorities entering the [legal] profession is one of the most significant problems facing the legal profession now and in the future.”).

⁶ See *LSAC Current Volume: Three-Year Summary*, available at <http://lsac.org/lsacresources/data/three-year-volume> (last visited Oct. 3, 2013).

⁷ See *LSAC Volume Summary: Admitted Applicants by Ethnic and Gender Group*, available at <http://lsac.org/lsacresources/data/ethnic-gender-volume-summary/admits> (last visited Oct. 3, 2013). Matriculants by ethnic groups are only reported in percentages. *Matriculants by Ethnicity*, *supra* note 5.

⁸ *Grutter v. Bollinger*, 539 U.S. 306, 330–32 (2003); *Fisher v. University of Texas at Austin*, 570 U.S. ___ (2013).

⁹ These rankings have also been blamed for influencing the spending priorities of law schools. See Tania Karas, *Facing Drop in Applications Law Schools Cut Costs*, N.Y.L.J., Oct. 2, 2013, available at http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202621710322&Facing_Drop_in_Applicat

that the current rankings methodology and the ensuing competition over rankings cause law schools to over rely on the LSAT admissions test.¹⁰ We wanted to think publically through possible reforms of the *U.S. News & World Report* rankings methodology to value diversity as an essential aspect of quality legal education and, therefore, inject diversity as a component of the “best law schools” index. However, we also realized that *U.S. News* rankings are only one facet of the complex issue of law school admissions. By opening this inquiry, we intended to expand the responsibility for increasing diversity within the profession beyond law school deans and admissions officers. We sought to work with pre-law college advisors to bring them the newest diversity research, a vocabulary and data that could enhance their understanding of the challenges facing students of color and encourage a reexamination of their outreach and counseling. We invited pre-law advisors to join this larger conversation with law school administrators and scholars to stimulate pre-law advisors to develop counseling techniques and to forge relationships with students of color that would better prepare them for the rigors of legal study as well as the application process. Although on a remarkably short timeline, we thought big, envisioning a series of presentations at regional and national conferences that would create bodies of work dedicated to improving diversity within the legal academy created by the various constituencies. These resources would eventually be made available to pre-law and law school admissions officers, along with a listserv to facilitate open discussion about use of these developing techniques.

Pre-law advisors are gatekeepers. We believe advisors can be more visible, accessible, and culturally attuned to the needs of diverse students when they first arrive on college campuses. To further improve their efficacy, pre-law advisors can be better connected to law school admissions personnel so that they have inside lines of communication available to them and an understanding of which law schools have explicit diversity goals. Many students of color, whether African American or Hispanic/Latino, are first generation college students without access to informal networks. These networks acquaint them with the unspoken rules about the academic requirements needed to adequately prepare for the rigors of a professional degree, including how to develop an employment and service record to

ions_Law_Schools_Cut_Costs&slreturn=20130904142453.

¹⁰ See generally Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicious Effect of Rankings*, 81 IND. L.J. 309 (2006); Jeffrey Evans Stake, *Minority Admissions to Law School: More Trouble Ahead, and Two Solutions*, 80 ST. JOHN’S L. REV. 301 (2006) [hereinafter Stake].

distinguish themselves while in college; how to prepare for the LSAT and when to take it; how to choose appropriate law schools; and when to apply.

This lack of awareness is compounded by the fact that LSAT scores for African Americans and Hispanic/Latinos, as a group, are lower than those of other demographic groups.¹¹ So many, but not all, African American and Hispanic/Latino law school applicants are confronted with the challenge of navigating a low LSAT score in the law school application process. In addition, these students too often arrive on college campuses with less academic preparation compounded by their need to work outside of school to pay tuition and other expenses.¹² Anecdotally, we hear that white students, those who can rely on their parents, relatives, or family friends for advice on applying to law school, often bypass institutional resources, such as pre-law programs and counseling by pre-law advisors. However, students of color, especially African American and Hispanic/Latino students, as well as first generation white college students, need these institutional resources. For example, in looking at the shut out rates among racial groups, “shut out” meaning that applicants are rejected from all of the schools to which they have applied, African Americans confront particularly high barriers to admissions.¹³ We know that among African American college students, law school is the top choice for a professional degree.¹⁴ However, far fewer African Americans apply to law school than take the LSAT and even fewer matriculate.¹⁵ In 2008, white applicants experienced a 34% shut out rate, rejected by all of the law schools to which they applied; Mexican Americans fared worse with a 46% shut out rate.¹⁶ African Americans had an astonishing 61% shut out rate.¹⁷ The

¹¹ *Post-Conference Report*, *supra* note 4, at 15 (citing Gita Z. Wilder, *The Road to Law School and Beyond: Examining Challenges to Racial and Ethnic Diversity in the Legal Profession*, 21 (2003) [hereinafter *Wilder*], available at <http://lsacnet.org/research/Challenges-to-Racial-and-Ethnic-Diversity-in-Legal-Profession.pdf>; *Stake*, *supra* note 6, at 313 (“The LSAT scores of black and Hispanic students are lower than the LSAT scores of white students.”).

¹² DOROTHY EVENSEN & CARLA D. PRATT, *THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION* (2012). Where the authors interviewed successful African American law school graduates and found that financial pressures make employment almost universally imperative in undergraduate school. These students did not understand that in law school employment as a way to subsidize education became perilous by interfering with classes and study.

¹³ Conrad Johnson, *Disturbing Trend in Law School Admissions*, *LAWYERING IN THE DIGITAL AGE*, <http://blogs.law.columbia.edu/salt/> (last visited Dec. 2, 2012).

¹⁴ Wilder, *supra* note 11, at 28 (“Law continues to be the most popular choice of profession among underrepresented minorities entering postbaccalaureate education.”).

¹⁵ *See id.* at 16–19.

¹⁶ *Disturbing Trend in Law School Admissions*, <http://blogs.law.columbia.edu/salt/files/2010/02/graphs.pdf> (last visited Dec. 2, 2012).

¹⁷ *See id.*

discrepancies in shut out rates might be evidence that institutional resources, such as access to pre-law advising programs, are not being used by diverse students, remain inaccessible to them, or if available, are ineffective.

By bringing together pre-law advisors together with other stakeholders—state bar administrators, law school deans and admissions officers, scholars, and diversity activists—we intended to help pre-law advisors understand how important they are to the overall goal of diversifying the legal profession. We want these pre-law advisors to be an essential part of this conversation, bringing them new research and resources to improve their efficacy, and exploring with other stakeholders how to best incorporate this research into their outreach and counseling strategies. Ultimately, we want to engage pre-law advisors so that they can better identify and counsel college students of color to choose courses that will enhance their academic skills, prepare for the LSAT and understand the role of the exam in admissions, and choose law schools not through the lens of the *US News & World Report* rankings, but through an understanding of each law school’s mission and culture.¹⁸

When we began SALT’s B.A. to J.D. Pipeline Project, we each brought to the collaborative a commitment to diversifying the legal profession. Just months after the “Opening Doors” program, the urgency to acknowledge the role of pre-law advisors as gatekeepers intensified. On January 18, 2012, the United States Supreme Court agreed to hear *Fisher v. University of Texas at Austin*¹⁹ with the issue certified for argument directly confronting the future of the use of race as a criterion in admissions to institutions of higher education.²⁰ Although the 7-1 decision left the principle of affirmative action intact in higher education, the Supreme Court reversed and remanded the *Fisher* case. It upheld a university’s educational judgment that diversity is an important goal, but found that there must be strict scrutiny applied in the implementation of any race-based admissions policy.²¹ The viability of affirmative action is not clear.²² Effective means for initiating and maintaining relationships require

¹⁸ *Post-Conference Report*, *supra* note 4, at 18.

¹⁹ No. 11-345, 570 U.S. ___ (2013).

²⁰ Whether this Court’s decisions interpreting the Equal Protection Clause of the Fourteenth Amendment, including *Grutter v. Bollinger*, 539 U.S. 306 (2003), permit the University of Texas at Austin’s use of race in undergraduate admissions decisions. SALT filed an amicus brief on August 13, 2012 in *Fisher* examining the benefits of diversity in the classroom and in the development of a more just and equitable society.

²¹ *Fisher*, *supra* note 19.

²² See *Schuetz v. Coalition to Defend Affirmative Action*, No. 12-682, argument scheduled for

an intentionality to serve all students attending colleges and universities, not just the easily accessible ones. This urgency requires that college and university cultures evolve so that each of the services offered on campus works well with the student constituencies whose interests need to be nurtured and grown. This urgency also requires that pre-law advisors engage in a broad conversation among themselves and with law school administrators to share what works and what doesn't, so that we do not isolate students of color from the information they need to be successful in achieving their dreams.

The "Opening Doors" program was funded by a grant from The Charles Evans Hughes Memorial Foundation and St. John's University School of Law. Panelists were recruited for their expertise, because what we wanted, and what we succeeded in creating, was an open discussion among these essential stakeholders. We believe we began that discussion.

The program is briefly described below with the participants identified.

We Have a Problem Here—Admissions and the LSAT: Demonstrating the decline in African American and Mexican American admissions to law school and discussing "stereotype threat," the psychological discomfort people experience when they worry that their actions may confirm an unflattering stereotype about themselves or their groups.

- Moderator: *Anthony Paul Farley*, James Campbell Matthews, Distinguished Professor of Jurisprudence, Albany Law School

Conrad Johnson, Clinical Professor of Law, Columbia Law School; Author, *The Disturbing Decline in Law School Admissions*

Rachel D. Godsil, Eleanor Bontecou Professor of Law, Seton Hall School of Law

Working Session: Strategies for Reaching Students of Color: Listening to law school students of color who failed to receive adequate counseling and how they overcame their predicaments to apply to law school and an introduction to two pipeline programs in the New York area.

- Moderator: *Solangel Maldonado*, Professor of Law, Seton Hall School of Law

Leonard M. Baynes, Professor of Law, Director, The Ronald H. Brown Center for Civil Rights and Economic Development, St. John's School of Law

Juan Cartagena, President and General Counsel, LatinoJustice

Hector Maquieira '13, St. John's School of Law

Whitney Montgomery '12, Touro Law Center

Working Session: Difficult Conversations: Cultural Sensitivity in Effective Counseling of Students of Color: Observing counseling scenarios where trans-racial relationships between pre law advisers and students fail and how to avoid these pitfalls.

- Moderator: *Hazel Weiser*, Executive Director, Society of American Law Teachers

Sonji R. Patrick, Director of Education, LatinoJustice

Nathalie Lamberto '13, St. John's School of Law

Robert Pallitto, Pre Law Advisor, Seton Hall University

Chrishana White '13, Seton Hall School of Law

Joseph Kenny, Pre Law Advisor, St. John's University, Staten Island Campus

Audree Maldonado '12, St. John's School of Law

Closing Plenary: Reforming U.S News Rankings to Include Diversity: Challenging Robert Morse, editor of U.S. News & World Report, on the negative impact of the law school rankings on diversity within law schools.

- Moderator: *Michael A. Simons*, Dean and John V. Brennan, Professor of Law and Ethics, St. John's School of Law

Kevin Johnson, Dean and Mabie-Apallas Professor of Public Interest and Chicana/o Studies, UC Davis School of Law

Robert Morse, Director of Data Research, U.S. News & World Report

Jeffrey Evans Stake, Robert A. Lucas Chair of Law, Indiana University Maurer School of Law

Sarah E. Redfield, University of New Hampshire School of Law

“Opening Doors” resulted in two articles written by Karen Sloan, a reporter for the National Law Journal who attended the program, and reprinted in a variety of its legal publications.²³ The collaborative’s proposal to present at a national conference, Pre Law Advisors National Conference (PLANC), in June 2012, was accepted.²⁴ SALT received additional funding to support a national campaign from the Leadership Council on Legal Diversity and Microsoft.

This Symposium issue brings together some intriguing scholarship that we hope will continue to drive the discussion about diversity, *U.S. News & World Report* rankings, and the barriers to admission that close the doors of American law schools to many students of color. We hope that these ideas will stimulate and encourage new counseling approaches and programs that work to pry open those doors. The articles are organized into two groups. The first group explores diversity as it is defined by *U.S. News & World Report* and questions why the current best law school rankings are separate from the diversity index and even published on a different cycle. The second group uncovers our underlying assumptions about what diversity is, identifies the ways in which diversity impacts the quality of education offered in any law school classroom, and ends with personal narratives about how specific pipeline programs opened the vista of possible opportunities for young people so that they could enter the legal academy and profession.

This volume begins with “U.S. News’ Views on Including Diversity in Our Best Law Schools Ranking,” in which Robert Morse, director of data research at *U.S. News & World Report*, explains why the magazine has a

²³ See, Karen Sloan, *Offering an Early Helping Hand on the Road to Law School*, (Dec. 2, 2011), available at <http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=1202534089430&slreturn=1>; Karen Sloan, *Professor’s Plea: Say no to ‘law school porn,’* THE NAT’L L.J. (Nov. 16, 2011), available at <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202532767464&slreturn=2012063109163>.

²⁴ *Pre-Law Advisors National Council, 6th Quadrennial Conference, The panel “The Burden of Stereotype and the LSAT: Advising Strategies”* (2012), <http://planc.org/conference/> (last visited Oct. 4, 2013). The panel attracted over fifty participants and included a lively question and answer discussion.

diversity index, starting in the 2010–2011 academic year, and why that index has not been integrated into the methodology for ranking law schools. Morse reasons that although diversity is important, thus justifying a separate index, there seems to be no agreement on a definition of diversity or a method for measuring it. *U.S. News* admits that it has borrowed its diversity index from a 1992 article by Philip Meyer and Shawn McIntosh in *The International Journal of Public Opinion Research*.²⁵ Furthermore, Morse claims that there is no consensus among law schools that achieving diversity goals adds to the quality of the legal education offered at any particular institution. And finally, Morse wants to keep *U.S. News* rankings out of the overall debate as to how to achieve diversity in the legal academy.

Alex R. Johnson adamantly disagrees with Morse in “Including Diversity in U.S. News’ Rankings: One Small Step in the Right Direction.” He critiques each of the reasons articulated and implied by *U.S. News* to segregate diversity from its purported quality index. By calculating a diversity index and then keeping it separate, Johnson claims that the diversity index is largely ignored by prospective law school applicants, deans, and law school donors and alumni. Diversity is calculable, since every law school approved by the ABA Section on Legal Education and Admissions to the Bar, the accrediting agency for American law schools, must submit annual demographic surveys of students and faculty. The data exists. And Standards 211 and 212²⁶ impose upon law schools a recognition of the importance of diversity with Standard 212, requiring that law schools “demonstrate by concrete action” their commitment to achieving diversity. But more importantly, the *U.S. News* rankings, Johnson argues, has had the consequence, hopefully unintentional, of affecting how law schools deliver their educational programs and decreasing diversity in those law schools.²⁷ The rankings impact both a law

²⁵ Phillip Meyer & Shawn McIntosh, *The USA Today Index of Ethnic Diversity*, 4 INTL. J. PUB. OP. RES. 51, 51–58 (1992).

²⁶ Standards and Rules for Procedure for Approval of Law Schools, issued by the ABA Section on Legal Education and Admissions to the Bar, the accrediting agency for American law schools. *ABA Standards of Approval of Law Schools 2012-2013*, available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/chapter_2_2012_2013_aba_standards_and_rules.authcheckdam.pdf (last visited Nov. 12, 2012).

²⁷ The rankings also impact the cost of legal education. The General Accounting Office was charged by the Senate Committee on Health, Education, Labor, and Pensions and the House Committee on Education and Labor with investigating the causes for the steep rise in law school tuition costs and whether the rise in tuition was a cause for a decline in the number of minority law school students. The resulting report, *Higher Education Issues Related to Law School Cost and Access*, October 2009, rebutted the claim that tuition costs rose because of the burden of ABA accreditation standards. See *GAO Report to Congressional Committees* (2009), <http://www.gao.gov/new.items/d1020.pdf>

school's admissions decisions, based on its desire to appear as selective as possible and on an applicant's choice of schools to which to apply. Students of color appear to internalize the rankings, often applying to schools to which they have no realistic chance of attending, while operating under the further misunderstanding that affirmative action is an important goal for all law schools, especially ones in the higher tiers. Affirmative action is not aggressively sought at these schools, according to Johnson, because the goal of diversity might affect the law school's rankings in *U.S. News*. Therefore, integrating diversity into the overall rankings might provide a counterbalance to this complicated and negative consequence of the rankings system.

Jeffrey Evans Stake in "Reclaiming Our Essential Freedom to Determine Who May Be Admitted to Study Law" reveals the power of the *U.S. News* rankings in interfering with the legally recognized authority of a law school to admit students. Like Johnson, Stake acknowledges that the role the *U.S. News* rankings has played in law school admissions is probably unintended. Yet Stake fears that including diversity within the best law schools rankings would further increase the influence of the rankings to the detriment of the legal academy and to any individual school's goals to become more racially inclusive. In critiquing the formula used by *U.S. News*, Stake, like Johnson, reveals how it is calculated. LSAT scores account for 12.5% of the rankings and are used to measure an individual school's selectivity. At times, *U.S. News* has used median LSAT scores to calculate its rankings rather than the 25 and 75 percentile LSAT scores of an entering class. According to Stake, the use of the median has the potential to be less detrimental to minority admissions, whereas the use of the 25 percentile especially impacts applicants of color who as a group score lower on the LSAT. *U.S. News* immediately switched back to using the median score when the ABA Section began collecting that information again as part of its annual demographic survey. However, on June 15, 2012, in an apparent attempt to increase the credibility of law school admissions figures in the wake of several scandals,²⁸ the ABA and the Law School Admissions Council announced a free pilot program for the 2012-2013 academic year where law schools can have their LSAT scores—25%,

(concluding that the cost of intensive clinical education and competition among law schools for higher rankings were driving tuition costs not regulation).

²⁸ University of Illinois College of Law was fined \$250,000 for misreporting admissions data that misrepresented the LSAT and GPA scores of its entering classes and Villanova University School of Law was censured for similar misrepresentations. *ABA Fines University of Illinois Law School for Publishing False Data*, THE WALL ST. J. (July 24, 2012), available at <http://online.wsj.com/article/SB10000872396390443295404577547441632758090.html>.

median, and 75%—verified by the LSAC.²⁹ Which figures will be used by *U.S. News* remains to be seen. Both Johnson and Stake conclude that so far, the Supreme Court’s decision in *Grutter v. Bollinger*³⁰ to permit use of race in law school admissions has not been actualized because of the weighted value given to the LSAT median scores and law schools aversion to the threat of a loss of lower rankings if they appear to become less selective.

Alfred L. Brophy in “African American Student Enrollment and Law School Ranking” analyzes the relationship between enrollment of African American students and the *U.S. News* peer assessment scores for law schools. First, there is empirical evidence that *U.S. News* rankings affect law school practices, with deans reporting that any rise or fall year to year affects the number of applications received, fundraising, and support for the law school from university administrators. Although avoiding the question of whether the *U.S. News* rankings have improved legal education or acted to its detriment, Brophy looks at what components *U.S. News* uses to identify the quality of students accepted into a particular law school. Diversity is not part of that formula currently. He then looks to see if there is a relationship between the presence of African American students in any law school and that law school’s reputation.

What he finds invites further examination. In the very top tier of law schools—the top 26—there is a minor and statistically non-significant relationship, which becomes minor and statistically significant among the top 103 schools. The presence of African American student enrollment might be positively associated with school quality. These correlations invite exploration as to how to value racial diversity qualitatively as a part of law school reputation. Are some of the higher-ranking schools better at recruiting African American students, or are these students attracted to particular schools? Brophy then compares these peer assessments for schools with Asian American and Hispanic student enrollments. The results are different. And there is another layer of analysis: whether the presence of minority faculty at law schools in the various tiers affects peer assessment. Although implied by Brophy, what would be revealed if diversity were to become an explicit component of reputation of the *U.S. News* rankings?

²⁹ *ABA and LSAC Announce Program for Reporting of Entering-Class Data*, ABA Now (June 15, 2012), <http://www.abanow.org/2012/06/aba-and-lsac-announce-program-for-reporting-of-entering-class-data/>. With both percentile and medians now available to *U.S. News*, it will be interesting to see whether the ranking algorithm is further tweaked.

³⁰ See discussion, *supra* note 20.

In Raymond Cross's contribution to this volume, "The Fate of Native American Diversity in American Law Schools," he suggests that there is already a successful model for recruiting, educating, and supporting underrepresented minority law school students that has succeeded in expanding the number of attorneys working in communities in need and developing a legal jurisprudence to bolster the economic and social status of the populations served. Rooted in the "War on Poverty" but grown through self-empowerment initiatives of the Johnson and Nixon eras, University of New Mexico School of Law has been the vortex of effective programs that have identified and educated several generations of Native American attorneys, perhaps 3000 in total. The efficacy of this program has jumpstarted similar programs at other U.S. law schools. Currently there are more than 64 Native American programs at ABA-approved law schools.

Professor Cross looks beyond race, ethnicity, and test scores—all at issue in *Fisher* and now *Schuetz*—to continue the task of nurturing and training community-based attorneys dedicated to empowerment of Native Americans. He suggests that "any qualified and committed candidate, whether minority or non-minority, who evidences a commitment to ultimately work as a community based lawyer would be eligible to participate in this program . . ." Native American self-determination is the criterion not the suspect classification of race.³¹ Scholars have argued, and Professor Cross contends that *Mancari* created and maintains a "fundamental doctrinal disjuncture between Native American diversity and race-based diversity." His explanation of how this disjuncture will survive current attacks on affirmative action are not just interesting, but encourage some optimism.

The next grouping of articles considers definitions of diversity beyond numbers, in terms of how diversity is an intrinsic component of the quality of education offered to all students, the value of diversity categories on admissions applications, and the role of pipeline programs. First, Chris Chambers Goodman and Sarah Redfield expand the definition of diversity within the academic community in "A Teacher Who Looks Like Me." "Inclusive excellence" is the current term used to re-envision diversity not as a separate but as an essential part of excellence in higher education. Inclusive excellence requires that diversity be infused throughout the organization of a college or university: administration, faculty, staff, and students. Goodman and Redfield focus on faculty diversity and provide insights into rethinking how the look of a faculty and its teaching methods

³¹ *Morton v. Mancari*, 417 U.S. 535, 541 (1974).

influence student outcomes and success. The authors conclude with a roadmap towards diversity that includes a broader definition of diversity, measuring that broader diversity, and publicizing diversity goals within the law school community and to prospective students, faculty, and staff. This is particularly important to law school applicants of color who unfortunately misconceive the prominence of affirmative action goals at law schools and pre-law advisors who need to know which law schools indeed value diversity and therefore have admissions policies that accommodate lower LSAT scores or GPAs.

Phillip Lee in “On Checkbox Diversity” questions the use of ethnic and racial categories that are not specifically linked to an applicant’s perspectives and experiences. Without a personal expression of how ethnicity and race have impacted an individual’s life, Lee considers these categories superficial and argues that they fail the *Grutter* test of using race only in a narrowly tailored way.

Finally, the value of pipeline programs that identify candidates early in their academic careers, enrich their educational experiences and counsel them through their high school, college, and law school application process is explored by Placido G. Gomez, a professor at Phoenix School of Law, and Barbara Kaye Miller, an admissions officer at that school, along with Hermelinda L. Alvarez, a third year law school student at Phoenix, and Eric Romero, an associate professor of languages and culture at New Mexico Highlands University. Each author is in a different point of his or her career and each describes a personal journey as a child of color through various pipeline projects that targeted Hispanics, African Americans, Native Americans, and poor rural children. These narratives are important evidence of the efficacy of these programs and foreshadow what might be lost if the U.S. Supreme Court ends the use of race as a component of higher education admissions.

Each of these articles in this Symposium issue contributes to the discussion legal academics and professionals must engage in, no matter the resolution by the U.S. Supreme Court of affirmative action.³² As the ABA

³² This urgency is not limited to the legal academy. The ABA Presidential Initiative Commission on Diversity issued “The Next Steps: Report and Recommendations” in April 2010 providing concrete ways in which law schools, law firms, courts and government, and bar associations could assess their practices to remove the barriers to entry and success to increase the number of diverse attorneys, corporate counsel, and judges. Some of the suggestions are merely facial, others require difficult conversations initiated and maintained by committed institutional leadership. See *The Next Steps: Report and Recommendations* (2010), AM. BAR ASS’N, available at http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.pdf (last visited July 31, 2012).

“The Next Steps” report states, there are several rationales for wanting to make the legal profession more diverse: to further democracy by creating greater trust in government; to help businesses extend their global reach; to prepare a broader base of leadership throughout our communities; and because our nation is becoming more diverse, the profession should reflect the demographics of our people.³³ There is no doubt that we have seen enormous gains through the operation of the Civil Rights laws in opening doors of opportunity for people of color. Yet this current crisis in legal education, compounded by the depressed job market for new graduates and the extraordinary student debt load carried by too many students, needs to be resolved so that there are lawyers available to offer legal services to all of our communities. This Symposium issue provides a broader constituency—bar administrators, law school deans and admissions officers, and pre-law advisors—with a way to bring these conversations about how to achieve diversity directly into their institutions. To make this happen, we need leadership, and we hope that this Symposium issue helps in providing leaders throughout the academy and profession with critical information to lead this essential conversation.

³³ *Id.*