

# LEGAL EDUCATION REFORM, DIVERSITY, AND ACCESS TO JUSTICE

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## I. THE WHITENESS OF THE LEGAL PROFESSION

The legal field is disproportionately, overwhelmingly white. Whites make up 67 percent of the U.S. population, but are almost 90 percent of its lawyers.<sup>1</sup> While Latinos, blacks, and Asian Americans are 12.5, 12.3, and 3.6 percent of the population, respectively, they are only 3.3, 3.9, and 2.3 percent of its lawyers.<sup>2</sup> The whiteness of

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The privilege associated with being a white person (who is also the dean of a law school) provides a platform from which to speak on racial diversity and access to justice. People of color often encounter silence and marginalization when raising these issues. My goal in this Essay is to join my colleagues of color to give voice to issues that need to be addressed in the academy and the broader legal community.

1. Law Sch. Admissions Council, Volume Summary Data through Jan. 9, 2009 (“Percentages of Various Populations”); *see generally* ELIZABETH CHAMBLISS, ABA, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2005) (summarizing the findings of the ABA Commission on racial and ethnic diversity in the legal profession).

2. Am. Bar Ass’n, Statistics About Minorities in the Profession from the Census, <http://www.abanet.org/minorities/links/2000census.html> (last visited Aug. 21, 2009); U.S. Census Bureau, *Profile of General Demographic Characteristics: 2000* (2000), <http://censtats.census.gov/data/us/01000.pdf> (last visited Aug. 21, 2009).

the legal profession is a disturbing fact that legal educators must confront.

Among professions, the legal profession is one of the whitest. The 2000 US Census data indicate that lawyers lagged behind doctors and surgeons, physical scientists, economists, computer scientists, journalists, architects, mechanical and civil engineers, and accountants in minority representation, despite similar histories of exclusion based on race in these professions.<sup>3</sup> Until the 1950s, most southern law schools formally excluded blacks and informally excluded other people of color.<sup>4</sup> The American Bar Association excluded blacks until 1943.<sup>5</sup> The number of people of color who graduated from law schools and became attorneys was miniscule until the 1960s.<sup>6</sup> Today, racial exclusion as a policy is no longer legal, though laws that unequally exclude may be popular.<sup>7</sup> In the absence of *de jure* bar, one reason for the continued disproportionate rejection of applicants of color is the use of the Law School Admission Test (LSAT).<sup>8</sup> Fueled, at least in part, by the controversial *U.S. News & World Report* rankings, most law schools use the LSAT as a key determinant in admission decisions.<sup>9</sup>

Although they give the illusion of being a neutral measurement for comparison, LSAT scores are deeply entwined with privilege in our society.<sup>10</sup> Being able to afford to take a test preparation course, for example, can enhance an LSAT score.<sup>11</sup> One major test preparation company guarantees a higher score or your money back,<sup>12</sup> while another touts the tens of thousands of students who have achieved double-digit point increases by purchasing its

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3. CHAMBLISS, *supra* note 1, at 1, 7, 67.

4. *Id.* at 66.

5. *Id.*

6. *Id.*

7. See Sam Howe Vernovek, *Vote in California is Motivating Foes of Anti-Bias Plans*, N.Y. TIMES, Nov. 10, 1996 at 1 (stating that 54 percent of the voters in California supported Proposition 209 which changed the state constitution to end affirmative action based on race, sex, or ethnicity in the admissions policies of state educational institutions). In 2006, a similar measure to amend the Michigan constitution passed. See Peter Schmidt, *Michigan Overwhelmingly Adopts Ban on Affirmative Action Preferences*, THE CHRON. OF HIGHER EDUC., Nov. 17, 2006, <http://www.chronicle.com/article/Michigan-Overwhelmingly-Adopts/5563>.

8. CHAMBLISS, *supra* note 1, at 78.

9. *Id.*

10. MARJORIE M. SHULTZ & SHELDON ZEDECK, IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 14 (2008).

11. Kaplan Test Prep, Guaranteed Results on the LSAT or Your Money Back, <http://www.kaptest.com/LSAT/The-Kaplan-Advantage/guaranteed-results.html> (last visited Aug. 21, 2009).

12. *Id.*

services.<sup>13</sup> Unfortunately, not only can privilege enhance scores, but the inverse can also be true. LSAT scores might be impaired by a lack of privilege: lack of quality education, a range of life complexities, test anxiety, financial stresses, lack of confidence, and stereotype threat can all depress LSAT performance.<sup>14</sup> As is widely known, the LSAT has a disparate impact on students of color. The average LSAT score for white and Asian/Pacific Islander<sup>15</sup> students is 155.<sup>16</sup> The average LSAT score for Chicanos is 149, for Latinos is 148, for blacks is 144, and for Puerto Ricans is 140.<sup>17</sup> These differential numbers do not appear to be justified by differences in educational background. One study of applicants to the University of California Berkeley's Law School at Boalt Hall, which matched applicants for undergraduate institution, undergraduate grade point average, and undergraduate major, concluded, "[T]he results of this study document that the LSAT favors Whites among equally achieving college students."<sup>18</sup> When the LSAT is heavily or exclusively relied upon in law school admissions decisions, people of color are disproportionately and inappropriately rejected and the

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13. Testmasters, Why We Are the Best, [http://www.testmasters.net/lsat/whyWeAreTheBest/we\\_are\\_best.aspx](http://www.testmasters.net/lsat/whyWeAreTheBest/we_are_best.aspx) (last visited Aug. 21, 2009).

14. William C. Kidder, *Does the LSAT Mirror or Magnify Racial and Ethnic Difference in Educational Attainment?: A Study of Equally Achieving "Elite" College Students*, 89 CAL. L. REV. 1055, 1085 (2001) (discussing stereotype threat research); see also Claude M. Steele and Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995) (discussing the results of stereotype threat studies performed on African Americans and the "role of stereotype vulnerability in the standardized test performance of ability-stigmatized groups").

15. The category of "Asian/Pacific Islander" includes a heterogeneous and complex grouping of people with different average educational backgrounds, wealth, and privilege, including people having origins in Burma, Cambodia, China, Guam, Hawaii, India, Indonesia, Japan, Korea, Laos, Malaysia, Pakistan, the Philippine Islands, Samoa, Thailand, and Vietnam, among many other countries. It is important to note: "[t]here are no Asians in Asia, only people with national identities . . . . But on this side of the Pacific there are Asian Americans. This broader identity was forged in the crucible of racial discrimination and exclusion: their national origins did not matter as much as their race." RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 502 (1998).

16. Law Sch. Admissions Council, Volume Summary Data through Jan. 9, 2009, <http://www.lsac.org/Applying/lsac-volume-summary.asp> ("Average UGPA, Average LSAT and Counts by Ethnic Group—Fall 2003 to Fall 2007 Applicants to at Least One ABA Approved Law School.").

17. *Id.* A study by the Latino National Political Survey, directed at people of Mexican, Puerto Rican, and Cuban origin, indicated that "Latinos" prefer to identify themselves by their national origin—as Mexicans, Puerto Ricans or Cuban-Americans, rather than a pan-ethnic label. Robert Suro, *Hispanic Pragmatism Seen in Survey*, N.Y. TIMES, Dec. 15, 1992, at A20.

18. Kidder, *supra* note 14, at 1080.

profession remains disproportionately white.<sup>19</sup>

The LSAT is only a weak predictor of performance in law school,<sup>20</sup> and it bears no relationship to achievement in the legal profession, whether measured by public service, income, or career satisfaction.<sup>21</sup> As the district court in the *Grutter v. Bollinger* affirmative action case found, “[t]he LSAT predicts law school grades rather poorly (with a correlation of only 10-20 [percent]) and . . . it does not predict success in the legal profession at all.”<sup>22</sup>

The Law School Admissions Council, which administers the LSAT, cautions law schools against over-reliance on LSAT scores in the admissions process.<sup>23</sup> Nevertheless, schools continue to over-rely on applicants’ LSAT scores for a range of reasons—not just because it is easier than textured, non-numerical file review,<sup>24</sup> but also in part because the average LSAT score of a school’s entering class is excessively weighted in the rankings game.<sup>25</sup> One study indicates that about 90 percent of the differences in law school rankings by *U.S. News & World Report* can be explained by the median LSAT of the entering class.<sup>26</sup> Schools under pressure to maintain their status or rise in the rankings, in turn, may place great weight on applicants’

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19. More than a fourth of top liberal arts colleges no longer require high school applicants to take the SAT for precisely these reasons. See Tamar Lewin, *Students’ Paths to Small Colleges Can Bypass the SAT*, N.Y. TIMES, Aug. 31, 2006, <http://www.nytimes.com/2006/08/31/education/31sat.html> (“Test scores . . . present a skewed picture both of poor students who had little formal preparation and wealthy ones who spend thousands of dollars . . . on tutoring.”).

20. See, e.g., Jeffrey S. Kinsler, *The LSAT Myth*, 20 ST. LOUIS U. PUB. L. REV. 393 (2001) (analyzing data from Marquette University Law School’s graduating classes of 1998 and 1999); David A. Thomas, *Predicting Law School Academic Performance from LSAT Scores and Undergraduate Grade Point Averages: A Comprehensive Study*, 35 ARIZ. ST. L.J. 1007, 1011–20 (2003) (analyzing the LSAT scores, undergraduate GPA, and law school GPA of students at Brigham Young University’s J. Reuben Clark Law School during the years 1973-2002).

21. CHAMBLISS, *supra* note 1, at 75.

22. 137 F. Supp. 2d 821, 870 (E.D. Mich. 2001), *rev’d*, 288 F.3d 732 (6th Cir. 2002), *aff’d*, 539 U.S. 306 (2003) (suggesting eliminating use of the LSAT in law school admissions altogether, or at least reducing reliance).

23. See AM. BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS 147 (2007-2008), <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Appendix%202%20LSAC%20Cautionary%20Policies.pdf> (“The LSAT should be used as only one of several criteria for evaluation and should not be given undue weight solely because its use is convenient.”).

24. See CHAMBLISS, *supra* note 1, at 775; see also Pamela Edwards, *The Shell Game: Who is Responsible for the Overuse of the LSAT in Law School Admissions?*, 80 ST. JOHN’S L. REV. 153, 157 (2006).

25. See CHAMBLISS, *supra* note 1, at 78; see generally SHULTZ & ZEDECK, *supra* note 10, at 86–87.

26. SHULTZ & ZEDECK, *supra* note 10, at 86. For analysis of how the LSAT affects law school rankings, see Edwards, *supra* note 24, 156–57.

LSAT scores.

Law schools are the primary gatekeepers to the practice of law, so we are responsible for the whiteness of the legal profession. The lack of diversity in the legal profession contributes to a justice deficit for communities in need that has reached a crisis level.

There is a justice gap between impoverished and affluent communities in this country,<sup>27</sup> one that leaves the poor with inadequate legal representation.<sup>28</sup> In criminal cases, for example, the poor often lack counsel, despite the fact that in *Gideon v. Wainwright*, the Supreme Court declared, “[i]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”<sup>29</sup> As the National Right to Counsel Committee published this year:

[T]oday, in criminal and juvenile proceedings in state courts, sometimes counsel is not provided at all, and it often is supplied in ways that make a mockery of the great promise of the *Gideon* decision and the Supreme Court’s soaring rhetoric. Throughout the United States, indigent defense systems are struggling. Due to funding shortfalls, excessive caseloads, and a host of other problems, many are truly failing. Not only does this failure deny justice to the poor, it adds costs to the entire justice system. State and local governments are faced with increased jail expenses, retrials of cases, lawsuits, and a lack of public confidence in our justice systems. In the country’s current fiscal crisis, indigent defense funding may be further curtailed, and the risk of convicting innocent persons will be greater than ever. Although troubles in indigent defense have long existed, the call for reform has never been more urgent.<sup>30</sup>

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27. Poverty correlates strongly with race and the racial disparity in income between whites and blacks may be getting worse. From 2000 to 2006, for instance, the black median household income as a percentage of white median income dropped from 65 to 61 percent. ANDREW KOHUT ET AL., PEW RESEARCH CTR., OPTIMISM ABOUT BLACK PROGRESS DECLINES: BLACKS SEE GROWING VALUES GAP BETWEEN POOR AND MIDDLE CLASS 4 (2007). In 2006, black median household income was \$31,969, Hispanic median income was \$37,781, and white median income was \$54,423. *Id.* at 12. In 2006, 24.3 percent of blacks, 20.6 percent of Hispanics, and 8.2 percent of whites lived in poverty in the United States. *Id.*

28. See, e.g., CAL. COMM’N ON ACCESS TO JUSTICE, ACTION PLAN FOR JUSTICE 4, 9 (2007), <http://www.calbar.ca.gov/calbar/pdfs/comcom/CAAJ-Brochure.pdf> (“[L]egal aid programs are still not able to provide even a minimal level of legal advice and assistance for 67 percent of the legal needs of California’s poor.”).

29. 372 U.S. 335, 344 (1963).

30. NAT’L RIGHT TO COUNSEL COMM., JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 2 (2009), [http://www.tcpjusticedenied.org/index.php?option=com\\_content&view=article&id=47&Itemid=86](http://www.tcpjusticedenied.org/index.php?option=com_content&view=article&id=47&Itemid=86) (last visited Aug. 21, 2009).

Justice deficits are similarly critical on the civil side. At least 80 percent of the civil legal needs of low-income Americans are not being met.<sup>31</sup> Although the ratio of attorneys delivering civil legal assistance to the general population is one to 525, there is only one legal services attorney for every 6861 low-income persons (or thirteen times less).<sup>32</sup> These data are a little dry, so it is important to note the kinds of things that are at stake when a legal services attorney cannot take a poor person's case: access to life's basic necessities, such as food, housing, and medicine. Moreover, these data on the civil legal needs of the poor were compiled before the current economic crisis sent many thousands of homeowners into foreclosure and workers into unemployment.<sup>33</sup>

Of course, addressing the justice gap should not solely be minority attorneys' responsibility, nor should they be saddled with repairing the consequences of historical injustice against people of color. Nevertheless, it appears that attorneys of color do more to address the justice gap than do white attorneys. After analyzing thousands of graduates of one elite law school, researchers explained:

[W]e expect that the typical minority attorney, either because of ethnic or experience-based identification with the less well off or because of family and community pressure not to forget one's origins, is more likely than the typical white attorney to feel an obligation to help the less fortunate, particularly those of his or her own race.<sup>34</sup>

This study found that attorneys of color were more likely to serve clients of color, engage in public interest and public service practice, and offer pro bono legal services.<sup>35</sup> Law schools' failure to admit diverse student bodies, therefore, not only affects the individuals

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31. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA—THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 18 (2005), <http://www.lsc.gov/justicegap.pdf>.

32. *Id.* at 16.

33. *See id.* at 3 (reviewing data compiled between 2000 and 2005).

34. David L. Chambers, Richard O. Lempert & Terry K. Adams, *Michigan's Minority Graduates in Practice: The River Runs Through Law School*, 25 LAW & SOC. INQUIRY 395, 499 (2000).

35. *See id.* at 401 (explaining that minority alumni "make somewhat different career choices than white alumni, as they are more likely than white alumni to begin their careers in government or other public service or public interest jobs and somewhat less likely than white alumni to begin their careers or to work today in the private practice of law . . . . All Michigan alumni are disproportionately likely to serve same-race clients, so minority alumni provide, on average, considerably more service to minority clients than white alumni do. Among those Michigan graduates who enter the private practice of law, minority alumni tend to do more pro bono work, sit on the boards of more community organizations, and do more mentoring of younger attorneys than white alumni do.").

denied admission, but it also contributes to the crisis in lack of service to and justice in minority communities.

A similar dialog is occurring in the medical academy about the medical profession. Experts call the lack of diversity in the medical profession and in medical schools a “public health crisis.”<sup>36</sup> They point to troubling disparities in health outcomes by race and poverty.<sup>37</sup> Immigrants and people of color routinely do not have access to doctors from their own communities.<sup>38</sup> Their medical outcomes tend to be worse than those of their white counterparts.<sup>39</sup> The conceptualization of the problem in the medical field as a public health crisis has encouraged medical schools to become more aggressive in outreach and pipeline work to attract students of color to the profession.<sup>40</sup> The Association of American Medical Colleges (AAMC) noted:

Increasingly, studies are indicating the myriad benefits of diverse pools of medical students, physicians, and physician-scientists. Such increases have been linked with an upsurge in research dedicated to diseases that have a disproportionate impact on racial and ethnic minority populations, a boost in the number of physicians serving typically underserved communities, and a greater number of individuals from racial and ethnic groups willing to serve as participants in clinical trials designed to alleviate health disparities.<sup>41</sup>

Studies indicate that medical school graduates of color disproportionately choose to serve under-served communities.<sup>42</sup> In 2007, for example, 50 percent of American-Indian/Alaskan-Native and 45 percent of black medical school graduates planned to practice in underserved communities.<sup>43</sup> The AAMC continued:

For medical education, the benefits of diversity branch out to increase the diversity of the physician workforce, which in turn improves access to health care for underserved populations, makes health care systems more responsive to the needs of racial and

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36. See, e.g., CTR. FOR CAL. HEALTH WORKFORCE STUDIES ET AL., STRATEGIES FOR IMPROVING THE DIVERSITY OF THE HEALTH PROFESSIONS 3 (2003) (“The underrepresentation of minorities in the health professions is a public health crisis.”).

37. See *id.* at 6 (“Minority communities experience inferior access to health care and poorer health compared with communities populated primarily by non-Latino whites.”).

38. *Id.*

39. *Id.*

40. See ASS’N OF AM. MED. COLLS., DIVERSITY IN MEDICAL EDUCATION 11 (2008) (“[E]nsuring a diverse pool of physician-scientists and clinical investigators is an essential step in eliminating health disparities.”).

41. *Id.*

42. *Id.* at 52.

43. *Id.* at 11.

ethnic minority populations, and increases the diversity of the research workforce, which can accelerate advances in medical and public health research.<sup>44</sup>

As Margaret Montoya, Professor of Law at the University of New Mexico and Special Advisor to the Executive Vice President for Health Sciences, explained: “[h]ealth disparities by race are driving medical school reform. Medical schools are saying, ‘We need to produce minority doctors to heal minority communities.’”<sup>45</sup>

Again, it is important to note, racial diversity among doctors is richer than diversity among lawyers.<sup>46</sup> Yet the medical academy is taking diversity seriously because it conceives of the problem as contributing to a public health crisis. The legal academy needs to understand its greater lack of diversity as contributing to an access to justice crisis in minority communities and begin to address the problem seriously.

This essay contains a set of preliminary reflections on diversity and legal education reform, each of which deserves its own article or series of articles. It proceeds as follows: There is a crisis in the legal profession today—we are failing to deliver justice to impoverished communities. The crisis is tied to the lack of diversity in the profession, which derives from the legal academy’s tendency to exclude those who do not come from privileged backgrounds. These facts have profound implications for how we should reform legal education, who we should educate, and how we should educate them. Yet, the current legal education reform dialog, as led by the *MacCrate Report*, *Best Practices*, and the *Carnegie Report*, discussed in Part II, does not grapple with the profession’s lack of diversity or the contribution this lack of diversity makes to a justice deficit for the disempowered. My thesis is that if we reform legal education without reconsidering who law schools educate and who our graduates serve, we will have missed an opportunity to transform the academy and to make legal education and the legal profession more relevant and its practices more just.

At CUNY School of Law, we have a mission to help diversify the profession and train public interest lawyers, which Part III describes. As a result of our mission, much of our curriculum reflects the

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44. ASS’N OF AM. MED. COLLS., THE DIVERSITY RESEARCH FORUM: SUCCESSFULLY EVALUATING DIVERSITY EFFORTS IN MEDICAL EDUCATION 32 (2007).

45. Margaret Montoya, Professor at the University of New Mexico in Law and Health Sci., Presentation to the CUNY Law faculty (Mar. 25, 2009) (notes on file with author). Professor Montoya holds a joint appointment at the University of New Mexico in Law and Health Sciences. ABA NET, Biography and Statement of Qualifications: Legal Scholar/Reporter Biographies, [http://www.abanet.org/diversity/summit/docs/Link\\_U.doc](http://www.abanet.org/diversity/summit/docs/Link_U.doc).

46. CHAMBLISS, *supra* note 1, at 7, 67.



changes suggested by the *MacCrate Report*, *Best Practices*, and the *Carnegie Report*. But our mission takes us further. We have also developed an in-depth Pipeline to Justice Program,<sup>47</sup> described in Part IV, to expand the number of students from underserved communities we bring into the profession. However, such a program alone is not enough, as Part V points out. The legal academy has to address the access to justice crisis more comprehensively in order to create legal education for a multicolored, inclusive profession.

## II. THE LEGAL EDUCATION REFORM CANON

This section outlines and critiques the three books that constitute the legal education reform canon—the *MacCrate Report*, *Best Practices*, and the *Carnegie Report*.<sup>48</sup> Collectively, these books argue that the traditional law school curriculum is “against practice.”<sup>49</sup> I believe their critique of law schools’ failure to fully prepare graduates for legal practice is correct. These books are right to identify the skills and values of legal practice, best practices in instruction, and methods to move law students from “thinking like a lawyer” to the practice of “lawyering.”<sup>50</sup> They are right to call on law schools to engage in comprehensive curricular reform to integrate doctrinal theory, practical skills, ethical considerations, and professional identity. Their critique clarifies the curricular and structural changes that are necessary in the legal academy.

In 1992, the ABA’s Task Force on Law Schools and the Profession published a book entitled *Narrowing the Gap*, commonly referred to as the *MacCrate Report*.<sup>51</sup> The *MacCrate Report* analyzed the evolution of the legal profession, the lawyering skills and professional values new lawyers needed to practice, within it, and

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47. CUNY Sch. of Law, Pipeline to Justice: A Novel New Program from CUNY Law, <http://www.law.cuny.edu/clinics/JusticeInitiatives/pipeline.html> (last visited Aug. 21, 2009).

48. A robust dialog on legal education reform, of course, started earlier than the 1992 publication of the *MacCrate Report*, with the advent of clinical legal education in this country and discussions about its import for the academy and the profession. There have been other important books advocating legal education reform from different perspectives. See, e.g., LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOLS AND INSTITUTIONAL CHANGE* (1995). Although not specifically about law school admissions, another influential and important book focuses on affirmative action and its impact over time: DEREK BOK & WILLIAM BOWEN, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998).

49. Anthony Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1073 (2009).

50. WILLIAM SULLIVAN ET AL., *EDUCATING LAWYERS FOR THE PROFESSION OF LAW* 51–56 (2007).

51. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992) [hereinafter *MACCRATE REPORT*].

ways to enhance legal instruction in these skills and values.<sup>52</sup> The first chapter of the *MacCrate Report* described the growth in the number of lawyers since World War II and the entry of people of color and white women into the legal profession during the 1970s and 1980s.<sup>53</sup> It ended with the key acknowledgement that “[t]he goal of equal opportunity within the profession is still a long way from realization.”<sup>54</sup>

The *MacCrate Report* described the skills and values of professional identity. It identified a central value as striving to promote justice:

[A] lawyer should be committed to the values of:

2.1 Promoting Justice, Fairness, and Morality in One’s Own Daily Practice;

2.2 Contributing to the Profession’s Fulfillment of its Responsibility to Ensure that Adequate Legal Services are Provided to Those Who Cannot Afford to Pay for Them; [and]

2.3 Contributing to the Profession’s Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.<sup>55</sup>

The commentary to this value indicated that the first area (2.1) requires that lawyers operate with integrity and respect in their practice and refrain from discrimination, the second (2.2) requires that lawyers engage in *pro bono* service, and the third (2.3) requires that lawyers work to support rules that will improve legal institutions generally.<sup>56</sup>

Value 3.3 from the *MacCrate Report* then indicated, “a lawyer should be committed to . . . Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, Age or Disability, and to Rectify the Effects of These Biases.”<sup>57</sup> The commentary to this value cited to studies indicating that “a lack of equal opportunity for minorities in the legal profession persists,” and argued that that lack of equal opportunity erodes public confidence in the justice system.<sup>58</sup> However, the *MacCrate Report* did not link the legal profession’s lack of diversity to a justice deficit in impoverished and minority communities.

In 2007, Roy Stuckey and others from the Clinical Legal Education Association deepened the academic dialog on legal

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52. See *id.*

53. *Id.* at 13-27.

54. *Id.* at 27.

55. *Id.* at 140-41.

56. *Id.* at 213-15.

57. *Id.* at 216-17.

58. *Id.*

education reform advanced by the *MacCrate Report* and suggested implementation of the skills and values needed in the legal profession with the publication of *Best Practices in Legal Education*.<sup>59</sup> The book began with reasons for developing a statement of best practices, arguing that the existing law licensing process is not protecting the public, that law schools are not fully preparing students for the bar exam or for practice, and that accountability and consumer protection require change in the academy.<sup>60</sup> The book then articulated a detailed set of best practices for instructional goals, curricular organization, and pedagogy in law school courses, student assessment, and institutional assessment.<sup>61</sup> *Best Practices* acknowledged that “[l]aw schools are not producing enough graduates who provide access to justice”<sup>62</sup> for either poor or middle class communities, but it did not link that problem to race or limited access to the legal profession itself.

The 2007 report by the Carnegie Foundation for the Advancement of Teaching entitled *Educating Lawyers: Preparation for the Profession of Law*<sup>63</sup> has been called “the best work on the analysis and reform of legal education.”<sup>64</sup> Through a series of vivid examples from law schools across the country, the *Carnegie Report* explained that law schools provide students with rapid socialization into the modes of legal thinking through appellate decisional analysis and the Socratic method,<sup>65</sup> indicating that this case dialog is the “signature pedagogy” of law school.<sup>66</sup> It then argued that law schools do not do a good job of integrating theory and practice or bridging professional identity and purpose.<sup>67</sup> The *Report* paid special attention to the values and ethics of the profession, criticizing how law professors often taught classes as if the law was value-neutral or as if values did not play a part in the development of one’s professional identity as a lawyer.<sup>68</sup>

Despite its engagement with values and professional ethics, the *Carnegie Report* did not analyze the values or professional ethics of the profession itself. Additionally, unlike the *MacCrate Report* and

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59. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 1–5 (2007).

60. *Id.* at 11–37.

61. See generally *id.* (reasoning that law schools should self-regulate their behavior to improve legal education before reform is enforced externally).

62. *Id.* at 24.

63. See SULLIVAN, *supra* note 50, at 132–33.

64. *Id.* at back cover.

65. *Id.* at 185–86.

66. *Id.* at 24.

67. *Id.* at 191–92.

68. *Id.* at 81–82.

*Best Practices*, the *Carnegie Report* did not acknowledge racial disparities within the profession, nor did it mention the problem of access to justice for marginalized communities.

Interestingly, the *Carnegie Report* did briefly discuss recent curricular reform in medical school and its increasing focus on the importance of clinical education and practical apprenticeships.<sup>69</sup> But it missed an opportunity to note the ways in which medical schools are reforming themselves to increase minority representation, diversify the medical profession, and address the public health crisis caused by the lack of minority doctors and other health care practitioners.

The curricular and structural changes suggested by the *MacCrate Report*, *Best Practices*, and the *Carnegie Report* to enhance law schools' training in lawyering skills and professional role assumption are important to better prepare graduates for legal practice, and they are also important to support law students of color. Traditional law school curricula can be off-putting and even hostile to a diverse student body. As Cruz Reynoso and Cory Amron have asserted:

There has been less attention . . . to the failure of law schools to create a learning environment in which diversity thrives—an environment conducive to the intellectual development of all law students. . . . Inviting a diverse group into an unyielding institution will not advance the goal of diversity, even if all those invited make an appearance.<sup>70</sup>

Professor Antoinette Sedillo Lopez has argued that the legal education reform canon's suggested curricular and structural changes might ameliorate the problem.<sup>71</sup> She writes that, while the changes suggested by the canon "would benefit all future lawyers (and future clients of those lawyers), the changes would be particularly welcome for students of color and members of groups which are under-represented in law school."<sup>72</sup> Sedillo Lopez points out that students of color and female students are often attracted to experiential learning opportunities and may better flourish in a curriculum that integrates doctrinal theory and practical skills.<sup>73</sup> Many experiential and clinical courses engage in practice on behalf of the poor and disenfranchised, which also may make these courses

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69. *Id.* at 80-81, 130, 192-93.

70. Cruz Reynoso & Cory Amron, *Diversity in Legal Education: A Broader View, A Deeper Commitment*, 52 J. LEGAL EDUC. 491, 492 (2002).

71. Antoinette Sedillo Lopez, *Leading Change in Legal Education – Educating Lawyers and Best Practices: Good News for Diversity*, 31 SEATTLE U. L. REV. 775, 776 (2004).

72. *Id.*

73. *Id.* at 777-80.

more attractive to students of color.<sup>74</sup>

Curricular reform to enhance professional skills may be more than an issue of making the law school experience more welcoming for students of color. Prof. Irene Segal Ayers argues that the undertraining of law students in professional skills and identity has the greatest negative impact on women's and minorities' later professional lives:

[T]he studies of the ways that law school undertrain law students—most notably the recent Carnegie Foundation report—pay little or no attention to how the deficiencies in the current model of law school education may disproportionately disadvantage women and minority law students later in their careers . . . [T]he undertraining of law students creates different, and much more detrimental, consequences for the post-J.D. careers of women and minority attorneys.<sup>75</sup>

Even though I fully support the reforms suggested by the *MacCrate Report*, *Best Practices*, and the *Carnegie Report*, it is troubling that the canon discusses law schools' failure to fully prepare students for legal practice as if it bears no relationship to the profession's concomitant failure to deliver justice to communities in need. While all three reports have as their goal the improvement of the quality of legal services, none grapples with the lack of legal services in underrepresented communities. The canon's reform agenda hinges on better training law students for legal practice. Nevertheless, it is silent on two important, practice-centered questions: 1) who in society most needs legal services, and 2) how the critical legal needs of underserved communities affect the kind of education law schools should provide and the kind of students law

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74. *Id.* at 779.

75. Irene Segal Ayers, *The Undertraining of Lawyers and Its Effect on the Advancement of Women and Minorities in the Legal Profession*, 1 DUKE F. FOR L. & SOC. CHANGE 71 (2009). Professor Beverly Moran argues further that values training in race, class, and gender should be incorporated throughout the curriculum as a form of cultural competency:

Training in gender, race, ethnicity, and class in law school is not primarily about social justice. Instead, lawyers with cultural competency are essential for the profession to properly serve the public. Yet, the new curriculum reform movement does not recognize an obligation to train law students in matters of gender, race, ethnicity, and class and how they shape legal rules. In contrast, the medical model fully accepts cultural competency as a fundamental practice skill after its own harsh history of segregation and gender exclusion. The failure to fully address gender, race, ethnicity, and class as part of the new curriculum reform movement has serious implications for the legal profession, particularly the profession's obligation to serve the public and pursue justice.

BEVERLY MORAN, DISAPPEARING ACT: THE LACK OF VALUES TRAINING IN LEGAL EDUCATION – A CASE FOR CULTURAL COMPETENCY (forthcoming 2009).

schools should educate.<sup>76</sup>

The *MacCrate Report*, *Best Practices*, and the *Carnegie Report* each implicitly or explicitly critique the “value-free investigation” of the formative case dialog in law schools,<sup>77</sup> yet their investigation of legal practice itself is value-neutral. They reach outside the academy to address the needs of legal practice, but only so far as legal practice itself is value-neutral.

I do not think that the authors of the three reports have an understanding of justice that is value-neutral; however, I do think it is striking that the reports do not discuss the importance of justice given our society’s disparities across wealth, skin color, and other vectors of privilege. The legal education reform canon is almost silent on the lack of diversity in the legal profession and the consequences for marginalized communities.<sup>78</sup> Diversity in law schools enhances the education of majority students, but that is not why it is most valuable. Rectifying the legal, social, financial, and status-related exclusion of racial minorities from the profession is itself a form of justice.<sup>79</sup> Moreover, diversity in the legal profession is most valuable because it will enhance the delivery of justice to disempowered communities.

Why would the authors of the *MacCrate Report*, *Best Practices*, and the *Carnegie Report* sidestep the need for diversity in the profession and its relationship to the delivery of justice to communities in need? Perhaps the authors feared that placing race, class, and privilege at the center of the discussion might marginalize their legal education reform agenda. Inclusion of underrepresented groups as full members of the legal profession has often been treated as a secondary or tertiary concern.<sup>80</sup> For justice and legitimacy,

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76. In terms of the theory that law schools teach, Professor Alfieri argues that the *Carnegie Report* “overlooks the relevance of critical pedagogies in teaching students how to deal with difference-based identity and how to build cross-cultural community in diverse, multicultural practice settings . . . .” Alfieri, *supra* note 49, at 1092.

77. SULLIVAN, *supra* note 50, at 81.

78. To be fair, many discussions about diversity in law schools and in the legal profession do not connect a lack of diversity to a justice deficit for communities in need. See, e.g., Dennis W. Archer, *Diversity and Legal Education*, 37 IND. L. REV. 339 (2004); Reynoso & Amron, *supra* note 70, at 499.

79. Additionally, lawyers make, execute, and interpret laws and a healthy democracy requires representation by all segments of society in legislative, executive, and judicial processes.

80. See, e.g., Terry Smith, *Speaking Against Norms: Public Discourse and the Economy of Racialization in the Workplace*, 57 AM. U. L. REV. 523, 584 (2008) (explaining the difficulties encountered by minority and non-minority law professors and students who work towards creating a more diverse legal employment landscape); Judith Kilpatrick, *The Value of Difference: Practicing in a Diverse World*, 42 ARK. LAW. 10, 11 (2007) (“Leaders of the legal profession, in Arkansas and nationally, also have noted the profession’s lack of diversity and the need for improvement.”).

however, broad access to the profession must be a central concern.

The overwhelming whiteness of the profession contributes to a disparity in justice for the poor and disempowered. If we reform legal education by restructuring the curriculum but fail to address who law schools teach and who our graduates serve, we will have missed an opportunity to diversify the profession and renew its commitment to making justice a reality for all.

### III. THE CURRICULUM AND MISSION OF CUNY LAW

The legal education reform canon stays away from potentially controversial depictions of the programs and social movements from which pedagogical insights are derived. But CUNY Law is trying to preserve the connection between its progressive, political commitments and the lived experiences of marginalized prospective students and clients, as well as public interest lawyers.

The CUNY Law curriculum integrates doctrinal law, lawyering, and ethical decision-making from the first day of the first year of law school. The *Carnegie Report* describes our required, sequenced lawyering program in which students move from simulated practice in the first and second year to representing clients in the third year. The teaching combines abstract knowledge, ethics, critical theory, practical skills, the development of professional identity, and live client representation.

Our program concentrates on those skills and competencies identified by the *MacCrate Report* as essential to legal education. Every CUNY Law student receives individualized supervision in twenty required credits of lawyering and clinical courses. In these courses, our goal is to develop students' competencies in six areas: professional responsibility, clinical judgment, legal reasoning, theoretical perspective, communication, and management of effort.<sup>81</sup> This system foregrounds the components of capable practice, and it operates as a framework within which faculty design more sophisticated and demanding learning goals as students advance. The lawyering curriculum also allows students to see that legal problems do not present themselves under neat subject headings in books but within the context of clients' complicated lives.

The CUNY Law faculty reflects on best practices for teaching on a regular basis. We hold monthly teaching rounds on pedagogical challenges.<sup>82</sup> At these rounds, we tackle a complete description of a

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81. CUNY Sch. of Law, Academic Philosophy, <http://www.law.cuny.edu/academics/AcademicPhilosophy.html> (last visited Aug. 21, 2009).

82. See generally Susan Bryant & Elliot S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007) (discussing clinical rounds).

particular teaching problem, goals we have for the class, strategies for resolving the problem, and points of shared learning and knowledge after the discussion. We see ourselves as allies and compatriots in our efforts to continuously improve how we teach.

CUNY Law aims to help our students develop into professionals who, throughout their careers, reflect on and learn from their experiences, recognize the law's relationship to the social, economic, and political context in which it operates, and practice with a concern for the responsibilities commensurate with their privilege.<sup>83</sup> Through our program, we attempt to ensure that our diverse graduates are prepared to serve their clients and to increase underserved communities' access to justice immediately upon graduation.<sup>84</sup>

We aim to produce outstanding public interest and public service attorneys. We aim to be an *access* institution, to provide keys to the profession to communities that have historically been locked out. We aim to increase diversity in the legal profession, and to populate it with lawyers seeking justice above personal gain.

In addition to our curriculum and pedagogy, this mission shapes our academic policies, hiring, admissions, career services, and culture. One result of our mission is that we send a greater

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83. See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); John Cicero, *The Classroom as Shop Floor: Images of Work and the Study of Labor Law*, 20 VT. L. REV. 117 (1995); Stephen Loffredo, *Poverty, Inequality, and Class in the Structural Constitutional Law Course*, 34 FORDHAM URB. L.J. 1239 (2007).

84. See CUNY Sch. of Law, A Sequenced Program to Create Access to the Legal Profession and Educate Professionals for Public Interest Practice, <http://www.aals.org/documents/curriculum/documents/CUNYDescription.pdf> (last visited Aug. 21, 2009) ("We do not achieve our mission unless we support our graduates who are opening practices in underserved communities. As a result, CUNY School of Law continues to teach both theory and practice even after graduation. Once students graduate, they have an opportunity to join our Community Legal Resource Network (CLRN). CLRN emerged when traditional poverty legal service providers were hit by funding cuts. Our enterprising graduates responded by opening solo and small-firm practices operating on sliding-scale and reduced-fee bases in communities with little access to justice. CLRN weaves these alums into practice groups (e.g., Family Law, Immigration, Labor & Employment, etc.), utilizing technology to create a virtual law firm. For example, when a CUNY Law graduate returns to the Dominican immigrant neighborhood in which she grew up to begin a solo practice to serve the people of her community, she has access through a CLRN group subscription to Lexis Nexis, as well as access through the CLRN listserv to hundreds of other CUNY Law School alums, many of whom are experts in a range of areas that are new to her. CLRN helps new lawyers in community-based practice throughout the city to deal with the problems inherent in such practices: isolation, financial pressure, and the need to develop expertise. CLRN provides to these small practitioners serving communities in need some of the advantages that large law firm associates take for granted.").



percentage of students directly into public interest and public service practice than any other law school in the nation.<sup>85</sup> Another result is that we enjoy one of the most diverse student bodies and diverse law faculties in the nation.<sup>86</sup> Our motto, "Law in the Service of Human Needs," infuses everything we do.<sup>87</sup>

Most law schools do not enjoy this kind of explicit social justice mission. They do not aspire, for instance, to graduate public interest and public service sector attorneys. Nevertheless, they take pride in the number of students they graduate who enter public interest and public service practice. For example, it is not unusual for law school publications to mention these alumni and their practice areas. Many law schools now have small public interest programs that will attract students who will enter the public interest bar and serve the needs of the underprivileged upon graduation.

Likewise, most law schools do not explicitly aim to provide access to the profession for members of underserved groups. Nevertheless, they take pride in their students and graduates of color, invariably featuring them prominently in recruitment brochures. Unlike public interest, however, which anchors small programs at many law schools, diversity does not often extend further than the college catalog.<sup>88</sup> While diversity is visually highlighted, it does not shape the curriculum, pedagogy, or student experience at most law schools.

The ABA supports the goal of diversifying the profession. The ABA's accreditation standard on equal opportunity and diversity requires law schools to:

[d]emonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by

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85. See CUNY Sch. of Law, About CUNY School of Law, <http://www.law.cuny.edu/about.html> (last visited Aug. 21, 2009).

86. *Id.* In support of our diversity efforts, we have recently opened two new centers at CUNY Law: the Center for Diversity in the Legal Profession directed by Professor Pamela Edwards and the Center on Latino and Latina Rights and Equality directed by Professor Jenny Rivera. See CUNY Sch. of Law, Clinics & Programs, <http://www.law.cuny.edu/clinics.htm> (last visited Aug. 21, 2009).

87. CUNY Sch. of Law, About CUNY School of Law, <http://www.law.cuny.edu/about.html> (last visited Aug. 21, 2009). To be sure, like all law schools, CUNY Law faces its challenges in terms of addressing issues of race, privilege, and exclusion. Some faculty members are uncomfortable discussing these issues in the classroom. Paradoxically, CUNY's diversity may heighten the discomfort. There are so many vectors of difference among the student body, particularly because first- and second-generation immigrants bring varied notions of insider/outsider status to the dialog. Nevertheless, our students routinely raise issues of race and privilege and attempt to keep the dialog on these issues fresh and at the fore.

88. Reynoso & Amron, *supra* note 70, at 491 ("And many law students find that their school's hospitality seems to end with the last page of the recruitment brochure.").

members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.<sup>89</sup>

The ABA's interpretation of this standard indicates:

The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admissions process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a more favorable environment for students from underrepresented groups.<sup>90</sup>

The interpretation suggests that regular admissions outreach, financial aid, and academic support programs<sup>91</sup> are sufficient to meet the ABA standard. The problem is that these kinds of ordinary efforts are inadequate to change the whiteness of the profession.

Most law schools do not do more than what the ABA requires. They do not go beyond the use of regular recruitment and financial aid in the admissions process to enhance diversity. They may reach out more to historically black colleges and universities, for example, in the recruitment process, but they tend to compete with other schools for the same students of color with the same strong LSAT scores. Few law schools have engaged in efforts to expand the pool of qualified applicants itself.

We are trying to expand the pool at CUNY School of Law. More than that, we are giving students who we cannot confidently admit initially a second shot at admission. We are identifying and supporting individuals whose numerical predictors, we believe, may be artificially deflated because of social forces working against them. And we are helping them to acquire the social capital to overcome those barriers. The Pipeline to Justice at CUNY Law is designed to enhance the diversity of the CUNY Law student body and the legal profession by supporting applicants from under-represented communities.

#### IV. THE PIPELINE TO JUSTICE AT CUNY LAW

Inequality shapes the educational lives of many young potential lawyers. It stymies the progress of students as early as grade school, with the result that a diminished number of students succeed in elementary school, middle school, high school, and college, and join

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89. AM. BAR ASS'N, *supra* note 23, std. 212(a).

90. *Id.*

91. See generally Pamela Edwards, *The Culture of Success: Improving the Academic Success Opportunities for Multicultural Students in Law Schools*, 31 NEW ENG. L. REV. 739 (1997) (providing an analysis of the academic success of multicultural students).

the pool of law school applicants. At every stage in the educational process, the rate of attrition for poor students and students of color is disproportionately high and contributes to a lack of diversity in the legal profession.<sup>92</sup> Law school pipeline programs across the country attempt to make interventions early along this stream on the theory that these interventions will widen the flow of students later in the application stage.<sup>93</sup>

The format of law school pipeline programs varies widely.<sup>94</sup> Perhaps the most common form is law-related educational programs in public schools. Here, law students teach elementary, middle, or high school students about their rights, the Constitution, or legal practice.<sup>95</sup> Law students go into underfunded high schools or other community-based settings to teach the basics of constitutional criminal procedure to students. It is a combination “know your rights” seminar and outreach to pique students’ interest in the legal field.

Another common form of law-related educational programming involves law students working with youngsters to stage mock trials. For example, Widener Law puts on a mock trial competition for area college students.<sup>96</sup> St. John’s University School of Law engages in a

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92. Reynoso & Amron, *supra* note 70, at 494-95.

93. I will set aside programs that are not driven and directed by law schools. There are a few nonprofit organizations working on the diversity pipeline to law schools that are funded by law firms or the ABA. “In 1968, the Council on Legal Education Opportunity (CLEO) was founded as a non-profit project of the ABA Fund for Justice and Education to expand opportunities for minority and low-income students to attend law school.” CLEO, About CLEO, <http://www.cleoscholars.com/index.cfm?fuseaction=Page.viewPage&pageId=482> (follow “About CLEO” hyperlink) (last visited Aug. 21, 2009). CLEO offers a comprehensive range of programs including a summer institute, mentorships, and law school programs. *See id.* Legal Outreach is a more recent example of an excellent early-intervention pipeline program. *See* Legal Outreach, About Us, <http://www.legaloutreach.org/content.cfm?cntid=1> (last visited Sept. 14, 2009). Additionally, Latino Justice (formerly the Puerto Rican Legal Defense and Education Fund (PRLDEF)) offers the Luis J. DeGraffe Summer Academy as part of its comprehensive LawBound program for Latino students. Latino Justice PRLDEF, LawBound, [http://www.prldf.org/legal\\_education/lawbound.html](http://www.prldf.org/legal_education/lawbound.html) (last visited Aug. 21, 2009). DeGraffe was a Professor at CUNY Law School and former PRLDEF education director. *Id.*

94. *See* Reynoso & Amron, *supra* note 70, at 500.

95. Street Law is one form of this kind of program, although Street Law has a specific purpose to provide a greater understanding of the law to those outside the legal profession and promote the use of interactive educational methods to develop academic, critical thinking, and civic skills. Its function as a possible pipeline is incidental. CUNY Law students engage in a robust Street Law program. *See* CUNY Sch. of Law, Program Goals & Structure, <http://www.law.cuny.edu/goalsandstructure.html> (last visited Aug. 21, 2009).

96. *See* Widener Law, Widener Law Diversity Pipeline Program, <http://law.widener.edu/CampusLife/ActivitiesandOrganizations/StudentBarAssociationDelaware/>

service day in which law students go into area elementary schools to teach fourth graders about the practice of law by staging a trial of *The Boy Who Cried Wolf*.<sup>97</sup> The notion behind these programs is to excite youngsters about the practice of law and interest them in becoming lawyers themselves one day.

Other law school pipeline programs are based on a mentor model: they match a law student with a high school or college student. The mentor then provides the high school or college student with academic and nonacademic guidance and support in school and occasionally through the process of applying for admission to law schools. The Hispanic National Bar Association has worked with schools to create effective mentoring programs.<sup>98</sup>

Overall, I would describe these kinds of law school pipeline programs as fairly weak. The grade-schoolers who have law students come in to teach them constitutional law still have the same under-resourced educational setting when the law students leave. I do not know of data indicating that law-related educational programs enhance the pool of law school applicants. Few have track records of success at bringing to the legal profession students who otherwise would not apply to or be admitted into law school. They may result in more education of populations as to their rights, which is a form of service to underserved communities, but without lawyers to help to enforce these rights, this work can only go so far in reducing the justice gap. Many of these pipeline plans are valuable, feel-good, community-building programs, but they cannot make up for disadvantaged educations that lead fewer students of color to aspire to become attorneys or to have the opportunity to develop the critical skills to make that aspiration realistic.

Moreover, focusing pipeline efforts on early intervention gives up on a generation of college graduates who have the capacity to succeed in law school. The Wingspread P20 Consortium is a collection of law schools and others devoted to pipeline programs. The group indicates that its “true deliverables can only be measured over a long time horizon as the pipeline widens and an increasing number of diverse students are competitive for admission to law school and success on the bar and in the profession.”<sup>99</sup> Communities in need should not have to wait a long time horizon for legal representation, however.

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DiversityPipelineProgram.aspx (last visited Aug. 21, 2009).

97. Ann Farmer, *Feeding the Diversity Pipeline*, STUDENT LAW., Apr. 2007, <http://www.abanet.org/lsd/studentlawyer/apr07/diversitypipeline.shtml>.

98. See Charles Calleros, *Enhancing the Pipeline of Diverse K-12 and College Students to Law School: The HNBA Multi-Tier Mentoring Approach*, 58 J. LEG. EDUC. 327 (2008).

99. See Univ. of S. Maine, 16<sup>th</sup> Annual Education Law Conference, at <http://www.usm.maine.edu/pdc/edlaw/wingspread.htm> (last visited Aug. 21, 2009).

Therefore, it is incumbent upon law schools to find ways to give diverse applicants whom we cannot admit a second chance at admission.

Some schools offer intensive summer programs designed to address disadvantaged educational backgrounds. Rutgers School of Law – Newark has offered a Minority Student Program since 1968, for example, which includes a two-week, post-admission summer course to enhance students' skills for law school.<sup>100</sup> CUNY Law offers a three-week Summer Law Institute to sixty entering students, taught by full-time faculty. The Institute is designed for students who could benefit from intensive orientation to legal academics, study skills, and the culture of law school. In summer 2009, New York University and Harvard inaugurated a five-week, summer program in which law school applicants from communities underrepresented in the legal profession live in residence on campus at one of those universities and prepare for the LSAT.<sup>101</sup> (It is not clear whether students in this program will matriculate into NYU, Harvard, or neither.) Other schools are trying to enhance applicants' skills with conditional admit programs that require students to successfully complete a summer course before matriculating.<sup>102</sup>

At CUNY School of Law, our Pipeline to Justice Program is designed to expand the current pool of students from underserved communities who would otherwise not have been admitted. One of the key differences between this program and the early intervention pipeline programs is that we work with students who want to go to law school now, instead of younger students who may or may not aspire to become lawyers later, and help them acquire the skills they need to obtain admission.

Toward the end of an admissions cycle, we sift the applications of students who have not been admitted that year. We look for students who have overcome challenges in their lives, come from groups under-represented in the profession, and evince the willingness to engage in hard work to achieve their dreams. Among them, we identify those who would have been admitted to CUNY Law—they are public interest-minded students with sound academic credentials—but for their low LSAT scores (below the 50<sup>th</sup> percentile). We then invite 200-300 of them to apply to a special program, the Pipeline to Justice, which gives them a second chance

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100. See Rutgers Sch. of Law–Newark, Foundations for Success, <http://law.newark.rutgers.edu/admissions-financial-aid/foundation-success> (last visited Aug. 21, 2009).

101. See TRIALS, About the Program, [http://trials.atfoundation.org/program/index/pf\\_printable/style=print?](http://trials.atfoundation.org/program/index/pf_printable/style=print?) (last visited Aug. 21, 2009).

102. Reynoso & Amron, *supra* note 70, at 500-01.

to matriculate into CUNY Law. We then review their Pipeline applications and admit between forty and fifty of them into the program.

The LSAT is greatly overvalued in law school admissions, but an LSAT score is not meaningless. It measures analytical, verbal, and logical reasoning skills—and it often correlates with privilege, as I mentioned earlier. Analytical, verbal, and logical reasoning skills are important ones for lawyers to master and can be learned. One of the reasons many students perform poorly on the LSAT is that they have not been given the educational preparation to master these skills. Once they receive training, some students can perform better. Part I of the Pipeline to Justice provides students with this preparation.

Part I is an intensive, seventeen-week course in analytic thinking, logic, and LSAT preparation. Part I also provides individualized, nonacademic counseling focused on test anxiety, self esteem, and managing the complex life circumstances that contribute to weaker standardized test performance. Over the course of Part I, students are given eight practice LSAT tests under real testing circumstances.

Part I culminates in the February administration of the LSAT. Based on our own institutional research about what minimum LSAT score may predict success in our first year program, Pipeline to Justice students who score above a 150 are automatically admitted to Part II of the Pipeline. Those who are on the borderline (within a few points of the threshold) are assessed individually for level of preparation and likelihood of success, and a few of them are invited to Part II as well. Our experience has been that about half of the Part I students advance to Part II.

Part II of the Pipeline to Justice is a six-week course in critical reading, graduate-level writing, and logical reasoning skills to prepare students for the rigors of law school. Part II focuses on basic writing skills—grammar, punctuation, sentence structure, language, etc.—as well as the importance of revision and re-writing, which students engage in throughout the course. It is founded on a mastery theory of learning: receiving copious feedback, students can rewrite until they get it right. Part II also focuses on the basic form of legal reasoning—issue, rule, application, conclusion—familiar to first year law students. Part II culminates in a written exam; those who achieve a B or better are granted admission to the Law School. Those who complete Part II successfully enroll in CUNY as first year law students the following fall semester.

We are now in our fourth year of the Pipeline to Justice Program.<sup>103</sup> As a result, the first group of Pipeline students is now in

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103. Associate Dean Mary Lu Bilek at CUNY Law has run the Pipeline to Justice

its third year at CUNY Law. There are sixteen students in the third year class, fourteen in the second year class, and twenty-one in the first year class who entered CUNY Law through the Pipeline to Justice Program.

As we go to press, the first class of pipeline students will take the bar and enter the legal profession in about six months' time. In law school, our pipeline students are doing as well as their peers. They are represented across the spectrum of law school GPAs, from students who are at the very top of the class to those who are on probation.<sup>104</sup> Interestingly, the pipeline student we have admitted so far with the lowest LSAT score earned a 3.79 law school GPA last semester.

Pipeline students constitute between 10 and 15 percent of our classes. They are a very diverse group. Of the sixteen 3L pipeline students, there are seven Latinos, five blacks, three whites, and one other. Of the fourteen 2L pipeline students, there are four whites, three blacks, two Latinos, two Asian/Pacific Islanders, one Chicano, one Puerto Rican, and one other. Of the twenty-one 1L pipeline students, there are six blacks, six whites, four Latinos, two Puerto Ricans, two Asian/Pacific Islanders, and one Native American. Most of the whites in the Pipeline grew up in poverty and/or are immigrants. None of these students would be in law school or headed to law school without the Pipeline to Justice Program.

We tie the curriculum of the Pipeline to Justice class itself to the principles advocated by the *Carnegie Report*. In the Pipeline course, we encourage students' professional role assumption. The first night of the course asks groups of students to imagine developing a public interest law firm and to describe the communities they will serve, the kind of law they will practice, and the nonlegal skills they have that will enhance their ability to represent their clients. This assignment not only matches students' personal values to their professional aspirations, but it begins on day one to use the CUNY model of connecting learning to practice and developing professional identity rooted in values.

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Program on a day-to-day basis since its inception with extraordinary commitment and care. See CUNY SCH. OF LAW, THE PIPELINE TO JUSTICE: CUNY LAW ENHANCES ACCESS TO THE PROFESSIONS, <http://www.law.cuny.edu/clinics/JusticeInitiatives/pipeline/pipeline.pdf>.

104. Once admitted, pipeline students take the Summer Law Institute in the summer before law school commences and, once regular coursework begins, they have access to the range of in-depth academic support programs we offer to all CUNY Law students. We could not have a successful Pipeline to Justice Program without our very strong academic support program. At CUNY, in addition to teaching the lawyering skills touted by the legal reform canon, we teach academic skills. Paying close attention to academic skills is important because we admit a group of students who have uneven undergraduate educational backgrounds.

## V. LEGAL EDUCATION FOR A MULTICOLORED, INCLUSIVE PROFESSION

This essay could end here, suggesting that CUNY Law's Pipeline to Justice is a laurel worth resting on. But the truth is that, as much as we are doing at CUNY Law to widen the pipeline of students of color who become attorneys, we are not doing enough. When one assesses what we are doing in legal education against what some of the most progressive medical schools are doing, the legal academy (and, in turn, the legal profession) pales in comparison. Even our strongest programs are nothing like the comprehensive efforts now being advanced by some of the best medical schools. Take the University of New Mexico Health Sciences Center, for example, which includes a school of medicine, college of nursing, and a college of pharmacy.<sup>105</sup> The UNM Office of Diversity administers a comprehensive pipeline program, which includes a middle school program, a high school program, a pre-college program, a college program, and a pre-med program.<sup>106</sup>

- The Dream Makers Health Career Clubs are after-school clubs established at four disadvantaged, Albuquerque-area middle schools to introduce students to the health professions and to stimulate their interest in science and math.
- The Health Careers Academy is a six-week summer program for high school freshmen, sophomores, and juniors designed to enhance students' performance in math, science, and English and to increase their preparation for a premedical curriculum.
- The Undergraduate Health Sciences Enrichment Program is a six-week, residential, summer program just before college designed to enhance academic preparation and facilitate entry into medical school. Students are required to complete a volunteer experience at First Choice Community Healthcare in Albuquerque and, therefore, serve communities in need.
- The Clinical Education Program is a summer program for college juniors, seniors, or recent graduates who wish to apply to the UNM School of Medicine. The program places students in primary care facilities and community health

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105. See Univ. of New Mexico, New Mexico's Academic Health Sciences Center, <http://hsc.unm.edu/about/> (last visited Sept. 14, 2009).

106. See N.M. FIRST, FORUM BACKGROUND REPORT, LOOKING TO THE FUTURE: PREPARING FOR THE NEXT GENERATION IN HEALTH CAREERS 16 (2008), <http://www.nmfirst.org/townhalls/UNMBkgrdReportFINAL.pdf>. These programs are funded through a federal grant from the Department of Health Resources and Services Administration, Health Careers Opportunity Programs, as well as the UNM School of Medicine and the State of New Mexico. *Id.*



centers in under-served areas throughout New Mexico. Students shadow physicians and learn the benefit of doctors returning to these communities to practice.

- The MCAT+ is a six-week summer program for New Mexico residents preparing to take the MCAT and apply to medical school.

These five programs are part of an even more comprehensive pipeline effort of just one university medical center. As proud as I am of the Pipeline to Justice Program at CUNY Law, I am mindful that it is only the beginning of what we could and should do to help develop legal education for a multicolored, inclusive profession.

Importantly, the University of New Mexico's pipeline program interweaves diversity efforts with actual service to communities in need. It is the weaving together of inclusion and health care delivery to underserved communities itself that is most inspiring. Such a plan holds great promise for the impact we could make to enhance access to justice and increase the number of students of color in the legal academy if we modeled comprehensive law school pipeline programs on such a template.<sup>107</sup>

There are obviously a number of barriers to implementing more comprehensive pipeline programs in law schools, including:

1. *U.S. News & World Report* Rankings. Law schools might fear that their rankings would drop if they began intensive pipeline programs and enacted more flexible admissions policies to enhance diversity.<sup>108</sup>
2. Funding. If they began intensive pipeline programs, law schools would need to invest time, energy, and money in creating and delivering them.
3. Academic Support. If they began intensive pipeline programs and admitted students with weaker academic and standardized test taking skills, law schools would need to enhance their academic support programs.<sup>109</sup>
4. Admissions Risks. If they began intensive pipeline programs, some pipeline students would fail once they matriculated,

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107. Moreover, law school clinical programs can do more of this kind of community-based work with more diverse students. Clinics can do more to support community organizing and mobilization, including support for organizations with race and ethnicity-based constituencies. See Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355, 356-57 (2008). By moving from individual to collective representation models, law school clinics can support more systemic solutions to the intertwined problems of racism, homophobia, misogyny, and poverty. *Id.*

108. If all law schools made the same intensive efforts, however, rankings need not be affected.

109. See Widener Law, *supra* note 96.

which is heartbreaking after an institution has put so many resources into a student.

These barriers are real but they should not deter increased efforts to develop new pipeline programs to support those students who want to become lawyers now, can be taught how to succeed in law school, and can become practicing attorneys.

The legal education reform canon—*MacCrate Report*, *Best Practices*, and *Carnegie Report*—teaches us that many law school programs are not sufficiently connected to the practice of law. The canon calls on the legal academy to develop curricula and programs that are more connected to practice. These reform efforts will begin law schools on the right path, but if we in the academy conclude reform before addressing the disproportionate exclusion of diverse applicants from the profession and the lack of justice in underserved communities, the most meaningful improvements will not occur.

Law schools are stewards of the future of the profession. How we grow the pool and who we choose to admit to law schools will determine the color of the profession and, more importantly, enhance or diminish the possibility of justice in underserved communities. We must reform legal education to better prepare students for practice, to be sure. But it is also our responsibility to reform legal education to enhance the diversity of the profession and, in turn, its delivery of justice to communities in need.