FACULTY DIVERSITY, THE LAW SCHOOL’S BOTTOM LINE, AND A SNAPSHOT OF AMERICAN SOCIAL EQUITY ................................................................. 1

Robert Case

JUSTICE: HEALING FOR THE PAST: OPPORTUNITY IN THE FUTURE .............. 32

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FACULTY DIVERSITY, THE LAW SCHOOL’S BOTTOM LINE, AND A SNAPSHOT OF AMERICAN SOCIAL EQUITY.

Robert Case

ABSTRACT

Disclaimer: This is not your typical “inside the box” law review article. The goal of this article is not to persuade the masses to any particular conclusion or objective outcome. This article is a journey for the reader to examine key questions, data, and ideas; using their own personal experience, and borrowing from the experience of others—to include the author—in order to come to their own conclusions. This article weighs the financial and qualitative importance of faculty diversity in law schools; examines the current state of faculty diversity in the legal education industry, and examines how the financial and qualitative factors mentioned, do, and should affect diversity in legal education. Further, the article critiques the work of Professor James Lindgren’s “Measuring Diversity,” wherein Lindgren posits that ethnic minorities are overrepresented at the lecture podium, and it is in fact White Republican males that are underrepresented. Finally, this article, in keeping with the Marine Corps Leadership Ethos, presents practical solutions to the problems discussed.
TABLE OF CONTENTS

I. The Bottom Line: Is Faculty Diversity A Critical Component Of The Law School Business Model?
   a) The model.
   b) What is diversity?
   c) Brief history of exclusion of Blacks in the legal profession.
   d) Conclusion.

II. If Faculty Diversity Is Not Essential To The Law School Business Model, Is It At Least Important Or Desirable?
   a) Legal education core principals.
   b) Racial diversity among law school faculty is not only valuable for society at large, but is vitally important for the individual law school and its students.
   c) More minority tenured professors provide underrepresented minorities with role models to identify with and can potentially combat minority students low enrollment and high attrition rates.

III. Is the Current Status Quo Acceptable? In Response to Professor James Lindgren’s “Measuring Diversity.”
   a) Social engineering and the concept of parity.
   b) The applicant pool argument.
   c) Over-representation and the cluster effect.
IV. Employing the Marine Corps Leadership Maxim, “Never Bring A Problem Without Bringing A Solution As Well!”: Changing The Status Quo?

a) An innovative hiring practice case study: The plight of “The Little Law School by the Sea.”

b) Call to action: The ABA must start an initiative akin to the judicial clerkship program; focused on guiding and informing diverse law students on career paths in legal education.

c) A renewed call for faculty diversity criterion in US News and World Reports law school rankings.

V. Conclusion
I. The Bottom Line: Is Faculty Diversity A Critical Component Of The Law School Business Model?

A. The Model.

The United States legal education industry has existed since 1780, and over the past two decades has appreciated into a billion dollar industry. The health of the legal education sector, like most service industries, is often tied to the outlook of the overall economy. Although the industry was negatively impacted by the global financial crisis of 2008, law schools have managed to survive. Notwithstanding a 28% drop in enrolment since 2010, schools have managed to stay financially afloat by doing some of the basic things troubled businesses often do: raising the prices of services and cutting personnel. Since 2008, law school tuition has increased by approximately 30 percent nationally and many schools have cut professors and staff. In addition to the economy, there are many factors, such as rising state bar admissions standards, and reduced consumer information costs that affect the profitability of law schools. Despite the bleak picture industry analysts have presented; law schools, like the U.S. economy in general, have seen better market conditions and are starting to financially recover from recent years of adversity. But the question we seek to answer at the outset is this: What role, if any, does faculty diversity play in the financial success of the individual law school? In order to answer this question, we must first answer another question, that is: “What exactly is diversity?”

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B. What Is Diversity?

Merriam Webster’s dictionary defines diversity as “the state of having people who are different races or who have different cultures in a group or organization.” The second part of this definition points to the fact that diversity is not just race based. The concept of diversity in the context discussed includes but is not limited to: gender, age, sexual orientation, religion, and socio-economic backgrounds. What this dictionary definition does not encompass is quantity and or proportion. Under this bare definition, an organization with 99 Muslims and one Christian would technically be considered diverse by the inclusion of this one Christian minority. This dictionary construct of diversity defies our understanding of the concept—and it is of the utmost importance to highlight this distinction early in our discussion. The word diversity at first glance seems simple enough to digest, but after a closer examination, the concept reveals itself to be more complex many assume. Diversity is not well confined to a single definition and is somewhat of an amorphous concept depending on who defines it. However, with a little effort, the idea of diversity can be contained to a workable concept for the purposes of this article.

What is similarly important is what diversity is not. Diversity is not a dog whistle term for a ‘back door’ in which minorities can gain access to opportunities they do not merit. Diversity, as defined by the author and in the context of this article, is the manifestation of social equity, through the cultural composition of our society being accurately reflected in the workplace—specifically the tenured law school faculty ranks. Diversity in America is analogous to a massive

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7 Merriam-Webster Dictionary; Diversity (Jan 12, 2016 10:09 AM), http://www.merriam-webster.com/dictionary/diversity
8 For a more in depth discussion on diversity losing its meaning, and the concepts of “racial capitalism” and racial commodification, see http://www.nytimes.com/2015/11/01/magazine/has-diversity-lost-its-meaning.html?_r=0, “Has 'Diversity' Lost Its Meaning?”
and ancient tree, which over hundreds of years, has a foundation of gnarled and horrific historical roots that still bears many beautiful branches of separate diverse groups. For preservation of scope and clarity, we will focus on one branch in the context of legal education—Black tenure track professors.

C. Brief History Of Exclusion Of Blacks In The Legal Profession.

Before we briefly delve into the history of Black exclusion in the legal professions, we should ask ourselves: but why examine Blacks specifically? To examine the lack of diversity among all religious, political, and minority groups would be a tiresome effort and counterproductive to the purpose of this article. Fortunately, this is a feat that has already partially been completed—in brilliant fashion—by Professor James Lindgren of Northwestern University School of Law.10 Moreover, Blacks in America share a quite unique and horrendous legacy in slavery, and subsequent oppression, that other minority groups do not.11 Lastly, as a Black man, law student, and veteran, the author, through experience, can credibly represent a salient qualitative perspective on the topics at issue in this article.

In addressing the historical exclusion of Blacks in the legal profession, it is of little use to recite a full history of racial discrimination in the United States. The pertinent events that lead us to the topics discussed are common knowledge to readers in America and abroad. However, a brief

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9 The term “Black” is used deliberately. As a second generation Jamaican immigrant, I am not an African American, yet I experience the same realities as those who describe themselves as African American. For more on differing views of racial prejudice from a jurisprudential standpoint see: Jerome Culp, Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy, DUKE L.J. 1095 (1991)


11 This is not to say, in any sense, that other groups were not also oppressed or affected by these historical polices.
timeline through the narrower scope of Black involvement in the legal profession is useful for the purpose of this article.

Some critics feel legal academia is exempt from racial inclusion disparities, however the pages of history reflect a different story; as the concept of tenure and Black law professors is a relatively new phenomenon in a profession over 200 years old. For example, in 1779, William and Mary College was founded which is considered the oldest law school in the U.S. In 1817, Harvard Law School was established and is the oldest continuously operating law school in the nation. Ironically, Harvard’s first professor of law position was funded by an endowment from the murderous and cruel slave trader Isaac Royall Jr. It wasn’t until 1844 that Macon B. Allen became the first Black American lawyer when he was admitted to the Maine State Bar. In 1910, Robert H. Terrell, a former slave and Harvard magna cum laude, became the first Black to serve as a Federal judge. In 1967, Thurgood Marshall was the first Black attorney to be appointed to the United States Supreme Court. And finally, in 1971—almost 200 years after the creation of the first legal professorship—Derrick Albert Bell Jr. received tenure at Harvard Law School, and is attributed as having been the first tenured Black law professor in U.S. history.

The legal education industry on whole, and the individual law school’s financial bottom line in particular, is unaffected by its lack of faculty diversity. Although there has been a recent trend of faculty diversity receiving more attention; for example the Princeton’s Review’s ranking

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12 Id. at 1
of the “Most Diverse Faculty” category,\textsuperscript{18} there is no data to suggest that schools on such a list are financially benefiting—much less that schools not on the list are suffering financial loss. In short, there is no empirical evidence which points to law schools with non-diverse faculties losing applicants or tuition dollars because of non-diverse faculties. In fact, there is only evidence to the contrary (See CWSL Discussion Below), that schools dedicated to diverse faculties are achieving diversity at a somewhat significant pecuniary expense, and an even more significant time investment.

II. If Faculty Diversity Is Not Essential To The Law School Business Model, Is It At Least Important Or Desirable?

“A diverse faculty who are hired, promoted, and retained based on meeting and supporting high standards of teaching and scholarship and in accordance with principles of non-discrimination;”\textsuperscript{19}

-Association of American Law School’s Core Values

A. Legal Education’s Core Principals.

Out of the 203 law schools accredited by the American Bar Association, 180 of them are members of the Association of American Law Schools (AALS).\textsuperscript{20} Although the AALS is by no means the single authoritative voice of the legal education community, it is a loud and prominent voice nonetheless.


\textsuperscript{19} Association of American Law Schools, \textit{Membership and Core Values} (Mar 2, 2016, 2:39 PM), https://www.aals.org/about/membership-core-values/

\textsuperscript{20} Association of American Law Schools, \textit{Member Schools} (Mar 2, 2016, 2:39 PM), https://www.aals.org/member-schools/
The AALS and its members are guided by a codification of its core values. The AALS’s core value number seven is to promote a standard of: “A diverse faculty who are hired, promoted, and retained based on meeting and supporting high standards of teaching and scholarship and in accordance with principles of non-discrimination;”\textsuperscript{21} The AALS’s core value of diversity seems to be in keeping with the legal professions implied virtues of social equity, and justice for all. The AALS plays a vital role in ensuring its members are in accord regarding research, scholarship, and recruitment, and other areas. Moreover, the AALS ensures that the nearly ninety percent of American law schools operating under its banner, do so in adherence to the explicit and implicit virtues mentioned above. \textit{Id.}

The American law school is like the left ventricle of the heart—responsible for channeling and pumping fresh lifeblood into the profession. So how can the idea of “equal justice for all”\textsuperscript{22} be credible if “all” are still not adequately included in the legal cornerstone process that is law school? Simply put: it cannot.

B. \textbf{Racial Diversity Among Law School Faculty Is Not Only Valuable For Society At Large, But Is Vitally Important For The Individual Law School And Its Students.}

America has long been identified as a melting pot of ethnic diversity. America enjoys the contrast of diversity that most societies possess such as: gender, sexual orientation, religion, socioeconomic status, etc. However, it is our unique heterogeneous ethnic makeup and social history, which shapes our sense of diversity. In the landmark affirmative action decision, \textit{Grutter}\textsuperscript{21} 

\footnotesize\textsuperscript{21} Association of American Law Schools, \textit{Membership and Core Values} (Mar 2, 2016, 2:39 PM), https://www.aals.org/about/membership-core-values/  
\footnotesize\textsuperscript{22} P Brown, \textit{Equal Justice for All: The time is now; the rule of law also applies to the poor}, \textit{ABA Journal} (2016).
v. Bollinger, Supreme Court Justice Sandra Day O’Connor so eloquently highlighted the importance of this diversity in the law school setting:

[Law schools] represent the training ground for a large number of our Nation’s leaders. Sweatt v. Painter, 339 U.S. 629, 634 (1950) (describing law school as a “proving ground for learning and practice”) ... In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training. As we have recognized, law schools “cannot be effective in isolation from the individuals and institutions with which law interacts. See Sweatt v. Painter, supra, at 634. Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.


Some take Justice O’Connor’s rationale in Grutter even further. Renowned philosopher and Carter Professor of General Jurisprudence at Harvard Law, Professor Duncan Kennedy, submits that there is an: “[Argument] for a large expansion of our current commitment to cultural diversity on the ground that law schools are political institutions. For that reason, they should abide by the general democratic principle that people should be represented in institutions that have power over their lives.”

Society at Large.

In 2017, is one person’s interaction with the legal system different from another’s based on their race; religion; or sexual orientation? Even those that would answer the preceding question

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with a “No,” must concede, that at the very least, the perception of our legal system, specifically the criminal justice system, will vary from person to person. A rich white male from Delaware may very well have a different perspective on the law, as compared to a poor Latino man from East Los Angeles. These different interpretations are more than words or ideas; they represent what the legal system is in the mind of those who pay for the system and are ultimately subject to it—the American Taxpayer. So how can American law schools, the very expensive third party service provider, provide the best product possible, absent the representation of so much of the diversity that makes America what it is? In short, it cannot! That is to say, it is not the best product that it could be.

A first year Criminal Law class would benefit greatly from the professor who rose from poverty and has been exposed, first hand, to the criminality so closely associated with poverty. The second year Constitutional Law class, is likely privileged by the homosexual law professor’s life experience. Imagine how the subject matter of the Constitutional Law class comes to life as said law professor reveals the assigned reading of the recent Obergefell v Hodges case was the very precedent that allowed the professor to marry his or her partner. Moreover, imagine the academic value and credibility a qualified attorney and member of the Navajo nation can bring to Third year students in one of the nation’s 20 plus Native Law Programs. These examples also illustrate the importance of the distinction between tenured and non-tenure track law professors. Minority non-tenure track professors—such as legal research and writing professors—do not have the same level of opportunity to share their diverse experiences that the tenure track professors who teach substantive law courses do.

C. More Minority Tenured Professors Provide Underrepresented Minorities With Role Models To Identify With And Can Potentially Combat Minority Students Low Enrollment And High Attrition Rates.

Outside the scope of this article, there is the fact that minority students—specifically Blacks—are underrepresented in law school lecture halls and are consequently underrepresented in the Juris Doctor pool—despite being overrepresented in our prisons. Black students are also statistically more susceptible to attrition than other groups. Could these statistics have anything to do with the fact that many Black law students lack Black role models in the classroom? Perhaps. Do disproportionately lower enrollment numbers and higher attrition numbers constrain the likelihood of more future Black professors in the classroom? Absolutely. The problems of low minority enrollment and high attrition rates have a direct causal relationship with even lower tenured faculty statistics. Therefore, any analysis of the issues discussed here, must acknowledge the circumstances that contribute to low Black tenured law faculty statistics.

A significant amount of research has been conducted to identify the sources of these aforementioned problems; specifically, high minority attrition in higher learning. In 2013, researchers from the University of Texas at Austin conducted a scientific study on a sample of 240 ethnic minority college students. The study found that: “Although the mental health of ethnic minority college students is influenced by general stressors affecting all college students…their mental health is also likely to be negatively affected by additional stressors, including experiences

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27 Id.
with racism and discrimination, traumatic stress, \textit{educational hegemony}, insensitive comments, \textit{and questions of belonging on a college campus}.\textsuperscript{28} These factors comprise part of what is called “Minority Stress Status.”\textsuperscript{29} Regardless of how one feels about the significance of minority law students lacking identifiable academic role models; it is difficult to argue that those same students have no cause to feel out of place in foreign academic environments, where there are few peers to identify with—and even fewer faculty.

In response to those who would make such an argument, I would present myself as anecdotal evidence. I have gone my entire law school career without having sat opposite a Black law professor—tenured or otherwise. I was also one of the very few Black male students at my law school. Despite this, I was able to successfully navigate through the foreign environment of law school; however, I succeeded having the benefit of serving in an organization that purposefully deprogrammed me from placing value on race. The organization I speak of is the United States Marine Corps. Put quite simply, when you are in a foxhole being shot at, the skin tone of the Marine next to you is of no importance. I attribute my ability to “adapt and overcome” (as the Marines say) in law school to my ten years of experience in the Marine Corps.

Many aspiring attorneys are not so lucky to have had the fortuitous preparation that I have experienced. Being able to culturally identify with others can be a very important factor in the equation that is law school success. Often compounding the previous mentioned obstacles such as Minority Stress Status is the very real psychological phenomenon of “impostor syndrome.”\textsuperscript{30}


\textsuperscript{29} Id.

Impostor syndrome is described as “a psychological phenomenon in which people are unable to internalize their accomplishments. Despite external evidence of their competence, those with the syndrome remain convinced that they are frauds and do not deserve the success they have achieved.” This phenomenon—as observed in Blacks—is hypothesized by some to be a psychological remnant from centuries of slavery; and has been scientifically substantiated as leading contributor to depression.31

To be quite candid, Law School is hard—and as many current millennial generational law students would say “like, really hard.” To earn ones Juris Doctor degree is rigorous. It is a test of one’s mental grit and intellectual endurance. If a prospective law student has a hard time adapting to adversity, then Law School, much less the legal profession, is probably not a good fit for the applicant. The observations above do not constitute an argument that certain law students, by virtue of their ethnic identity, are entitled to be assigned a Professor to hold their hand during the two to three-year journey of law school. On the contrary, the discussion above serves to point out that there are imperceptible, yet empirically substantiated obstacles to success, which certain groups of law students face more regularly than others. By striving to achieve a level of diversity—which reflects the actual diversity of our nation—at the faculty level, the legal education industry can also reap the additional benefit of increasing minority enrollment and reducing attrition. Two birds of social equity with one stone.

III. Is the Current Status Quo Acceptable? In Response to Professor James Lindgren’s “Measuring Diversity.”


A. Social Engineering and the Concept of Parity.

In a genius analytical examination of law school faculty diversity, Professor James Lindgren relies on statistical data to conclude that through the means of social policies like affirmative action, that Blacks are actually overrepresented at the lecture podium and that White Christians and White Republicans are underrepresented; therefore, rendering the true paternalistic purposes of diversity initiatives moot. Furthermore, Lindgren submits that political party diversity is just as important and racial diversity. I respectfully and most enthusiastically disagree.

Professor Lindgren is correct in regards to normative arguments. These arguments are often betrayed and exposed by actual data and empirical evidence. There is an ancient urban maxim which states “Men lie, women lie, but numbers don’t.” This is true. Notwithstanding this principle and still showing deference to Lindgren’s argument, we find his argument fails not only for qualitative reasons but also for quantitative reasons. We shall discuss the normative arguments first.

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Lindgren states that: “If as a society we are to engage in social engineering, we need to pay more attention to realities and to think more critically about what we are actually accomplishing.”33 This statement is borderline insulting to many American citizens. Lindgren seems to forget America’s track record regarding social engineering.34 The policies of manifest destiny, centuries of slavery, and policies like segregation and Jim Crow laws are the reason we are having this discussion. If it had not been for the vitriolic post-bellum social engineering initiatives of the State and even Federal governments, there would be no need for the Civil Rights Act of 1964, the coining of the term “affirmative action,” or any of its jurisprudential progeny. It was these social engineering policies that provided causation for this dialogue and made the utterance of the words “affirmative action” possible.

The contemporary social engineering known as affirmative action and diversity policies, are by their very nature, reactionary and remedial. Does this excuse a complete disregard for the aims of these policies or even purposeful overrepresentation? No, but what is categorically undeniable is the fact that, but for these policies Americans who were once purposefully deprived of opportunities due to immutable characteristics—such as race—are now being provided with new opportunities.

Using Lindgren’s own numbers35, we see that there is an upward trend in minorities being represented on law school faculties. Yet, despite this upward mobility, the numbers still do not match up with Lindgren’s conclusions—this is where Lindgren’s argument fails. Lindgren argues that when you look at the data, racial minorities, women, and specifically Blacks have all reached

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33 Id. at page 60
34 Merriam-Webster’s dictionary defines social engineering as: management of human beings in accordance with their place and function in society.
35 See Table 1 from Measuring Diversity: Law Faculties in 1997 and 2013 for statistics in this section’s analysis not specifically cited.
“parity.” Parity is defined as: “the state or condition of being equal, especially regarding status or pay.”\textsuperscript{36} When the African American population in the U.S. is roughly 13.2 percent of the US population\textsuperscript{37} the notion that Black Professors representing 9.7 percent of tenured law professors amounts to not only parity, but over representation, is laughable.\textsuperscript{38} Parity is equality. Thirteen percent and nine percent are not equal. Equality in America is a sacred virtue not to be trifled with; something is either equal, or is not equal. Moreover, Professor Lindgren asserts that African Americans are over represented by a ratio of 2:1. If Professor Lindgren wants to depict that representative equality exist in our law school faculty offices, he should either use different words and data, or at least not predicate his depiction of equality on filtered statistical schemes such as the “applicant pool.”\textsuperscript{39}

B. The Applicant Pool Argument

Lindgren’s representation that parity exists is not without basis—his basis is simply flawed. The argument is that we should not look at representative diversity from an outside societal standpoint, but we should look at the level of representation from an internal perspective, i.e., how many Blacks have law degrees and are therefore eligible to teach in the first place. The argument boils down to this, although Blacks represent thirteen percent of the U.S. population, only 4.5 percent of the lawyer population is represented by Blacks, therefore as long as 4.5 percent of tenured law professors are Black, all things are equal or at par. Anything over 4.5 is “overrepresentation.” This filtered argument is easily understandable, and is just as easily deflated. The applicant pool argument is analogous to the hypothetical below.

\textsuperscript{36} Merriam-Webster Dictionary; Parity (Jan 12, 2016 10:09 AM), http://www.merriam-webster.com/dictionary/parity

\textsuperscript{37} U.S. Census Bureau 2014 Population Estimate

Imagine a fisherman who is required to catch 130 fish each day in order to break even and pay his boat Captain. However, the size of the fisherman’s net only allows him to catch a maximum of sixty-five fish a day. Therefore, as long the fisherman captures sixty-five fish in a day, all is well, and everyone from the fisherman to the Captain is happy—with the exception of the fish. Well, all is not well, and in fact, what the fisherman needs to do is get a new and wider net. Here, the 130 fish represent the numbers needed to meet true parity. The net represents the limited metric; a metric that conveniently fits the inequitable conclusion that Black law professors are adequately represented in American law schools.

It is true: you can’t hire someone as a law professor if they do not have a law degree. Furthermore, you cannot hire a law professor if they are not duly qualified. This includes a sound academic record, published scholarship, and usually a record of distinguished practice. With that being said, to argue Blacks are adequately represented among the tenured ranks because the ratio of Black professors to Black lawyers is even (here above even) is a statistical fiction. Ironically, although the President of this country happens to be a Black lawyer turned law professor, Black America is not represented by the 4.5 percent of lawyers that are Black. Lindgren’s applicant pool argument ignores a whole host of problems regarding the limited amount of Black lawyers to begin with.

There is a similar problem regarding young Blacks having access to higher education in this country.\textsuperscript{40} Although this problem is outside the scope of this article, it does exist, and bleeds over into the problem we examine now. These problems have been identified by society and the politicians it elects. Affirmative action policies, diversity, and inclusion initiatives have been put

in place to remedy these problems. On the contrary, to whittle down data in a way that supports a normative argument that said policies are no longer needed is throwing the baby out with the bath water. The fact that Professor Lindgren’s number trail starts at a point where things are not equal to begin with, goes to prove that *a process which begins with inequitable input is likely to have an inequitable output.*

**C. Over Representation And The Cluster Effect.**

Breaking down the over representation argument even further, we must ask: If Blacks are “overrepresented” in the tenured ranks, where are all these Black law professors? Out of the 664 tenured and tenured track African American law professors reported by the ABA in 2013,\(^41\) one-sixth of these professors are resident at a group that consists of only six schools. *Who is this group of six schools you ask?* This group of six schools represents the six Historically Black (HBC) Law Schools accredited by the ABA. In a survey done by the author, we found that: Thurgood Marshall School of Law; Howard University School of Law; North Carolina Central University School of Law; Florida A&M University College of Law; The UDC David A. Clarke School of Law; and the Southern University Law Center represented almost seventeen percent of the tenured and tenure-track Black professors in the entire industry. If the statistical distribution of tenure-track Black law professors conceals a cluster of six schools where said professors are concentrated, then—ironically—the argument that the industry as a whole is diverse is diluted by virtue of that same professor concentration. At the outset we mentioned that true diversity encompasses proportion. An individual law school’s faculty is not “diverse” if it is comprised of a majority of minorities, just as the profession is not diverse because it has reached a set of raw numbers

\(^41\) See Table 1
achieved by concentrated clusters of minorities. This is yet another reason why the tenured professor to lawyer correlation is flawed, and the over representation argument is very misleading.

IV. MARINE CORPS LEADERSHIP MAXIM: “NEVER BRING A PROBLEM WITHOUT BRINGING A SOLUTION AS WELL!” WHAT SHOULD AND SHOULD NOT BE DONE TO CHANGE THE STATUS QUO.

“For the sake of American education in general, I particularly worry about the minute number of blacks studying to become college teachers.”

Harvey Mansfield

When the world-renowned law professor and conservative political philosopher Harvey Mansfield is worried about the number of Blacks in academia, you know there is a problem. Despite Professor Lindgren’s idea that Blacks are overrepresented in law school faculties, it is clear (based on our closer examination above) they are not. The day that Blacks represent 13 percent of the tenured faculty in law schools is the day true parity is met. Until that day, what can we do to reach this goal?

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A. An Innovative Hiring Practice Case Study: The Plight Of “The Little Law School By The Sea.”

Having conceded there is a shortage of diverse AALS applicants, many law schools have found it difficult to hire diverse candidates, specifically Black law professors. One such school is California Western School of Law (CWSL). CWSL has a track record of vigorously seeking to hire diverse faculty members year in and out, but the efforts are to no avail..⁴³ Although its’ geographic location in San Diego is an attractive selling point, its’ 4th Tier law school status rankings make it difficult to “close the deal” with prospective applicants.⁴⁴ Despite these challenges, and those listed above, (applicant pool, etc.), CWSL has made a conscious decision amongst its’ Deans and faculty to overcome these challenges.⁴⁵ The head of last year’s CWSL Appointments Committee, Professor Kenneth Klein, believes “a diverse faculty is of the utmost importance to a quality legal education, and we [CWSL] owe it to our students to provide them with that!”⁴⁶

Professor Klein and the school’s diversity committee meet regularly throughout the school year to brainstorm and execute plans to recruit a diverse faculty.⁴⁷ It has become clear that the small number of eligible diverse candidates (relying on the AALS and the annual Faculty Recruiting Conference recruiting models) is almost moot in light of the fact that CWSL is competing with Ivy League schools. This list includes one of the top 100 ranked law schools, USD School of Law, located only five miles away. Why would a new or seasoned law professor want

⁴⁴ Id.
⁴⁵ Id.
⁴⁶ Office Hours Interview with Professor Kenneth Klein, Appointment Committee Chair, California Western School of Law, (Apr 15, 2016)
⁴⁷ Id.
to teach at a school very few have heard of when that same professor is being courted by the likes of Stanford or other Top Ten Ivy League schools?

In order to combat these realities, CWSL has become creative in implementing and examining a few of the following initiatives:

(1) Reaching out to young distinguished practitioners in the community. Often times these lawyers do not have professorship on their career roadmap and therefore lack published works—a de facto prerequisite for any law professor position. To remedy this, CWSL Law professors have personally volunteered their time and effort to mentor and assist with scholarship in order to help the practitioner get published and in turn make the practitioner a stronger candidate;

(2) Ensuring the appointment and diversity committees have overlapping memberships;

(3) Personally communicating to local minority bar organizations CWSL’s desire to hire qualified diverse candidates who have a desire to teach but may not have applied via the AALS process;

(4) Reexamining the implementation of Visiting Assistant Professors Programs in order to attract scholars of color as well as the possibility of awarding local fellowships with certain administrative perks necessary to aid in the production of quality scholarships.48

*CWSL like most law schools does not expect the ethnic make-up of its faculty to translate into serious increases in revenue. Moreover, all the aforementioned initiatives cost time and some of them require capital. These initiatives cost time and capital at a period where working capital is in short supply. In February 2016, Moody’s Investors Service downgraded CWSL’s bond rating from Baa1 to Baa3 based on “materially worse than previously projected operating deficits.”49 To think that despite a currently tumultuous economic climate for law schools, CWSL has the

48 Id.
fortitude to stick to their principles and not abandon their commitment to diversity is laudable to say the least.

B. A Direct Challenge To The ABA Diversity and Inclusion Commission To Pilot A Program (Akin To The Judicial Clerkship Program) Focused On Guiding Diverse Law Students Interested In Careers In Legal Education.

In 2001 the ABA coordinated and hosted the first annual Judicial Clerkship Program.\textsuperscript{50} For the past 15 years the ABA has continued to host this program that pairs around 50 selected law students and 50 Judges from across the nation.\textsuperscript{51} The two groups interact over a three-day program in order to foster networking relationships, but more importantly, enlighten minority students to the career path of judicial clerkship and judgeship in general.\textsuperscript{52} The students are given valuable insight and guidance on how to follow these career paths.\textsuperscript{53} “The JCP was established after ABA and National Association for Law Placement research in 2000 that found that minority representation in judicial clerkships was generally lower than in law school populations.”\textsuperscript{54}

Looking at today’s statistics a similar plight is observed regarding the relationship between minorities in law school, minorities in practice, and minorities on the faculty.\textsuperscript{55} Given the ABA’s leadership role in the legal education community, the ABA should pilot a similar program. Students could be paired with top educators to network, but more importantly, learn what the students need to do in order to reach a career in academia. If the ABA believes law students don’t

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{50} American Bar Association, Judicial Clerkship Program, \url{www.americanbar.org/groups/diversity/diversitypipeline/projects_initiatives/judicial_clerkship_program.html} (2017).
\item \textsuperscript{51} Id.
\item \textsuperscript{52} Id.
\item \textsuperscript{53} Id.
\item \textsuperscript{54} American Bar Association, Judges “serve” as a U.S. Supreme Court justice, students “work” as clerks, Council for Ethnic and Racial Diversity in the Education Pipeline, \url{http://www.americanbar.org/news/abanews/aba-news-archives/2015/02/judges_serve_as_a.html} (March 1, 2016).
\item \textsuperscript{55} See Table 1
\end{itemize}
\end{footnotesize}
know what clerkships are, or how to become competitive clerk candidates, they will be surprised to learn how little most law students know about what it takes to become a tenured law professor in the ultra-competitive world of academia. For students who are already disadvantaged by attending the “wrong law school,” the next steps in their career after law school are crucial. Guidance on L.L.M. programs, scholarships, and differing areas of practice would help fill a very real knowledge void and potentially propel more diverse students to the lecture podium. Moreover, how this program would be the most helpful is very basic: allowing minority students to believe legal professorship is an achievable aspiration. If the ABA stands on the principles it espouses, it will take no exception to my very forward challenge to develop such a program.

C. A Renewed Call For Faculty Diversity Criterion To Be A Component In The “U.S. News And World Reports Law School Rankings.”

“A thousand words leave not the same deep impression as does a single deed.”- Henrik Ibsen.

In the legal education industry there is not a more influential source than the “U.S. News and World Report.” Prospective law students, lawyers, and law schools alike turn to U.S. News in order to determine who is who in the legal education industry. Every year U.S. News publishes their list of the top 100 law schools. Although U.S. News publishes the premier rankings in the industry, the publisher is annually subject to many criticisms. These criticisms include the allegation that the rankings boil down to three things: fame, wealth, and exclusivity. In 2007, thirty-seven College Presidents signed a resolution condemning the process as misleading and calling on others not to participate in the rankings. Recently, “A 2010 ABA special committee

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56 There is a pervasive attitude in law school hiring committees that applicants who graduated outside of a Tier One law schools are at a disadvantage for doing so. Some refer to this concept as the “academic pedigree.”
57 Kevin Carey, College Rankings Reformed, Education Sector (2009).
58 http://www.educationconservancy.org/presidents_letter.html
reported that the *U.S. News and World Report* ranking methodology tends to increase the cost of legal education for students, [and] to discourage the award of financial aid."\(^{59}\) Despite this report, the rankings are still widely respected and have serious pecuniary repercussions for those included and not included on the Top 100 list. Criteria such as Peer Assessment, LSAT Scores, and Faculty Resources make the list of what is important. Yet, there is no criterion related to student diversity much less faculty diversity. Recently U.S. News has developed a separate “Diversity Index,” but this is separate and apart from the premier Top 100 Law Schools Ranking.

In 2010, Vikram D. Amar and Kevin R. Johnson wrote an article calling for U.S. News to revamp their “Top 100” process to include not only a metric weighing student diversity, but a metric for faculty diversity as well.\(^{60}\) *Apparently the call fell on deaf ears.* The bottom line is that U.S. News and World Reports knows exactly how influential it is. We also believe that this organization realizes how a diverse student body and faculty can enhance the quality of a law school education. As a respected leader of review in the industry, the time has come that U.S. News implements faculty diversity criterion into their ranking process. No one is asking that these metrics be weighted on the same level as bar passage rate, but they should be present. *This absence of data on diversity sends a clear message to future lawyers, law schools, and the whole industry: diversity is not important.* How is it that, “library resources: total number of volumes and titles in the school’s library” makes the list, but not a diversity metric? U.S. News is out of step with not only the ABA and the AALS, but it is also out of step with the industry. I renew the call for U.S.

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News to revamp their ranking criterion to include diversity metrics

V. Conclusion

It has become clear that the level of faculty diversity within a law school holds little considerable financial incentive or value. But when looking at the industry as a whole, it also seems very clear that diversity is intrinsically valued. There are those (above) who argue the legal education industry is diverse enough. The data does not support this and only the reader can assess the numbers presented to determine if that assertion is true or not. We argue that the purpose of diversity policies, and the spirit of social equity will not be satisfied until the average law faculty represents the racial composition of this great nation. This realization of this social equity should be every law school’s goal, irrespective of the roadblocks on the way. Although law schools are in fact businesses—businesses that aim to make money—the profession of law is so much more than that. It is a profession that values equity and justice over financial gain. With this in mind, we are confident that with the hard work of those working inside law schools, and those working their way into law schools, the day true parity is achieved within law school faculty lounges is surely on the horizon.
## Table 1: 2013 ABA Statistics Re: Ethnicity and Gender of Tenured Law Professors

The Ethnicity and Gender Representation of Law Professors (Fall, 2013) Compared to Lawyers and the English Fluent Full-Time Working Population, Ages 30-75

<table>
<thead>
<tr>
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<tr>
<td>Female</td>
<td>Non-H White</td>
<td>35.9%</td>
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<td>32.4%</td>
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<td>0.80</td>
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<td>9.2%</td>
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<td>Female</td>
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<td>73.4%</td>
<td>85.6%</td>
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<td>53.1%</td>
<td>41.3%</td>
<td>60.2%</td>
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<td>*</td>
<td>-7.1%</td>
<td>*</td>
<td>*</td>
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<tr>
<td>Minority (combined)</td>
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<td>32.2%</td>
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<td>0.81</td>
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<td>26.2%</td>
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<td>5.3%</td>
<td>6.2%</td>
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<td>5.3%</td>
<td>2.1%</td>
<td>-0.8%</td>
<td>0.85</td>
<td>*</td>
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<tr>
<td>Male</td>
<td>Asian Pacific Island</td>
<td>4.4%</td>
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<td>*</td>
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<td>0.97</td>
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<td>0.0%</td>
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<td>-1.2%</td>
<td>0.27</td>
<td>*</td>
<td>-1.0%</td>
<td>*</td>
<td>*</td>
</tr>
<tr>
<td>Male</td>
<td>2 or More Races</td>
<td>0.2%</td>
<td>0.8%</td>
<td>0.7%</td>
<td>-0.6%</td>
<td>0.26</td>
<td>*</td>
<td>-0.5%</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>2 or More Races</td>
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<td>0.8%</td>
<td>-0.6%</td>
<td>0.28</td>
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<td>-0.5%</td>
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<td>0.1%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.12</td>
<td>*</td>
<td>0.2%</td>
<td>2.67</td>
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<tr>
<td>Other Race Female</td>
<td>0.1%</td>
<td>0.1%</td>
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<td>0.12</td>
<td>*</td>
<td>0.2%</td>
<td>*</td>
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<tr>
<td>Other Race Male</td>
<td>0.1%</td>
<td>0.1%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.12</td>
<td>*</td>
<td>0.2%</td>
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</tr>
</tbody>
</table>

**Note:** Non-White Census category includes Black, American Indian, Asian, and Pacific Islander.

**Data Sources:**

- ABA Fall 2013 data (tenured faculty, tenure-track faculty & the dean); n=7089
- 2011, 2012, & 2013 American Communities Survey, employed full-time working population, ages 30-75, fluent in English; n=2,625,934
- 2011, 2012, & 2013 American Communities Survey, employed full-time lawyers, ages 30-75, fluent in English; n=26,466

* Differences significant at p<.05, using a 2-tailed Fisher's Exact Test
TABLE 2: 2017 Best Law Schools Rankings Methodology

QUALITY ASSESSMENT (WEIGHTED BY 0.40)

- **Peer assessment score (0.25):** In fall 2015, law school deans, deans of academic affairs, chairs of faculty appointments and the most recently tenured faculty members were asked to rate programs on a scale from marginal (1) to outstanding (5). Those individuals who did not know enough about a school to evaluate it fairly were asked to mark "don't know."
- **Assessment score by lawyers and judges (0.15):** In fall 2015, as in previous years, legal professionals, including the hiring partners of law firms, practicing attorneys and judges, were asked to rate programs on a scale from 1 (marginal) to 5 (outstanding).

SELECTIVITY (WEIGHTED BY 0.25)

- **Median LSAT scores (0.125):** These are the combined median scores on the Law School Admission Test of all 2015 full-time and part-time entrants to the J.D. program.
- **Median undergraduate GPA (0.10):** This is the combined median undergraduate grade-point average of all the 2015 full-time and part-time entrants to the J.D. program.
- **Acceptance rate (0.025):** This is the combined proportion of applicants to both the full-time and part-time J.D. program who were accepted for the 2015 entering class.

PLACEMENT SUCCESS (WEIGHTED BY 0.20)

Success is determined by calculating employment rates for grads at graduation (0.04 weight) and 10 months after (0.14 weight), as well as the bar passage rate, explained below.
- **Employment rates (0.18):** This is determined by calculating employment rates for grads at graduation (0.04 weight) and 10 months after (0.14 weight).
- **Bar passage rate (0.02):** This is the ratio of the bar passage rate of a school's 2014 graduating class to that jurisdiction's overall state bar passage rate for first-time test-takers in winter 2014 and summer 2014.

FACULTY RESOURCES (WEIGHTED BY 0.15)

- **Expenditures per student:** This is the average expenditures per student for the 2014 and 2015 fiscal years. The average instruction, library and supporting services (0.0975) are measured, as are all other items, including financial aid (0.015).
- **Student-faculty ratio (0.03):** This is the ratio of students to faculty members for 2015, modeled after an American Bar Association definition from previous years.
- **Library resources (0.0075):** This is the total number of volumes and titles in the school's law library at the end of the 2015 fiscal year.

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OVERALL RANK

Data were standardized about their means, and standardized scores were weighted, totaled and rescaled so that the top school received 100; others received their percentage of the top score. Law schools were then numerically ranked in descending order based on their scores.
“JUSTICE: HEALING FOR THE PAST: OPPORTUNITY IN THE FUTURE”
(Reentry/Education)

The Honorable Doris Smith-Ribner
Former Pennsylvania Commonwealth Court Judge

INTRODUCTION

This essay is based on my presentation at the 2014 U.S. Bureau of Prisons Northeast Region Reentry Conference held at the FCC Allenwood Training Center, Allenwood, Pennsylvania. The conference represents the expanding focus on offender reentry and its crucial role in the criminal justice system. This subject, in large part, has been prompted by a need for new ideas and strategies to reduce recidivism among formerly-incarcerated individuals after their return to the community, and embedded in this effort is a need to reduce corrections costs as well as to ensure public safety through criminal justice reforms designed to help individuals successfully reintegrate into society.
I

America incarcerates approximately 2.3 million individuals in its jails and prisons, and the U.S. Justice Department (DOJ) reports that 95% of the incarcerated individuals will be released and returned to their communities at some point in time. In 2010 taxpayers spent approximately $80 billion on corrections costs. Against this state of affairs, DOJ began an unprecedented and long-overdue comprehensive review of the nation’s criminal justice system in January 2013 under the direction of former Attorney General Eric Holder. This review was launched to identify reforms to ensure that federal laws are more fairly enforced and done so with fiscal prudence and efficiency. As the review moves forward, it is evident that this nation also must prioritize and focus on one of the most pressing causes that fuel pipelines into the nation’s jails and prisons while simultaneously developing new strategies to reduce recidivism (reoffending or reengagement in criminal conduct after punishment for prior conduct).

Society is faced with the reality that too many boys and young men of color, most notably Black and Hispanic, enter the criminal justice system too often as a result of disadvantages over which they have no control: school dropout or push out, disparate impact of school disciplinary policies, poverty, low adult expectations, falling behind peers in school, racial discrimination and other circumstances. Having no skills, no job prospects and no education, they get caught up in juvenile and/or criminal justice systems that engulf them in lifetime collateral consequences (civil sanctions and disqualifications) due to their criminal history. Society must acknowledge conditions that fuel pipelines into the nation’s jails and prisons, and it likewise must continue to develop new strategies to promote successful reentry to reduce recidivism.
The 1980s and 1990s war on drugs and get tough on crime/hardline law and order policies opened a floodgate of drug-related cases into courts across the nation as laws were enacted to increase the penalties for drug offenses and to impose mandatory/minimum sentences for specific drug offenses. As a consequence, federal and state corrections costs skyrocketed to absorb the massive increases in prison populations, and in almost four decades the nation is now confronted with the stark reality of its hardline approaches to crime. This nation holds the distinction of having the highest incarceration rates in the entire world: it incarcerates 25% of the world’s prisoners yet holds 5% of the world’s population.¹

Just a few statistical facts demonstrate how alarming the incarceration rates trends have become in this nation:

- In 1980 just over 500,000 individuals were incarcerated in jails and prisons nationwide – as of 2014 the nation incarcerated roughly 2.3 million people;
- In FY 1980 the nation spent $330 million for approximately 24,600 federal inmates under Bureau of Prisons control – FY 2014 costs rose to $6.859 billion for 216,000 inmates;
- In 1980 Pennsylvania spent $94 million to confine 8,243 individuals in 9 prisons – 33 years later in 2013 it spent $1.9 billion to confine 54,100 individuals in 26 prisons;
- In 2009 Pennsylvania had the fastest growing state prison population in the entire nation;
- Statistics vary widely on the national and state three-year recidivism rates but average at 60% and above; and
- In 2014 Blacks and Hispanics comprised a majority of the federal prison population and a majority of Pennsylvania’s prison population.²

¹ Inmates in the nation’s prisons come primarily from the most disadvantaged segments of this society and whose lives have been influenced by addiction, lack of job training or preparation and experience and other conditions that may be impacted by social inequalities. See The National Academies 2014 Report, “The Growth of Incarceration in the United States: Exploring Causes and Consequences,” http://www.nap.edu/catalog.php?record_id=18613.

It ultimately became evident that something had to be done to resolve unanticipated fiscal burdens imposed upon governments by the nation’s massive rise in incarceration rates at local, state and federal levels. Thus the current and on-going justice reinvestment and other reform initiatives to create policies to reduce prison populations and corrections spending and develop new reentry strategies.\(^3\) A fundamental question, however, has yet to be resolved. How does society eliminate barriers or collateral consequences that individuals face upon release which prohibit or severely restrict their ability to fully reintegrate and become productive and law-abiding citizens? The question is not just for corrections; it also is for the judicial and legislative branches of government and for all other stakeholders who must confront this 21st Century criminal justice issue.

II

In 2011 the Attorney General wrote to all of the state attorneys general, including Pennsylvania’s attorney general, asking them to review their state laws that imposed collateral consequences on individuals because of their criminal convictions. He noted that the high social and economic costs resulting from failed reentry policies related to higher crime, more victimization, increased family distress and greater fiscal burdens on state and municipal budgets. He cited the National Study on the Collateral Consequences of Criminal Convictions conducted by the American Bar Association (ABA) (http://www.abacollateralconsequences.org/) through the National Institute of Justice (NIJ) award made pursuant to The Court Security Improvement Act

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\(^3\) See Pennsylvania Criminal Justice Reform Act, Act 122 of 2012.
of 2007. The NIJ was directed to survey laws of all 50 states, U.S. territories and the District of Columbia that impose collateral consequences upon individuals as a result of their criminal history.

The ABA catalogued 900 collateral consequences laws in Pennsylvania that bar, or have barred, offenders from working in all sorts of jobs, professions, industries and facilities; from registering to vote upon release from incarceration; from licensure in various occupations; and from pursuing countless other rights and benefits afforded by law. While legislative action is needed to remove barriers to reentry, some challenges have in fact succeeded. Nationwide, the ABA documented over 38,000 laws that have the effect of preventing millions of individuals from successful reentry into society based upon their criminal history.

During its comprehensive criminal justice review, DOJ studied all phases of the criminal justice system (charging, sentencing, incarceration and reentry) to examine what practices work to deter crime and also protect the public. DOJ launched crime prevention and reentry policies through its “Smart on Crime” initiative that identified five major goals: prioritizing prosecutions to focus on the most serious cases; reforming sentencing to remove unfair disparities in the system and reduce overburdened prisons; promoting just punishment of low-level and nonviolent offenders by pursuing diversionary programs, like drug courts, instead of incarceration; increasing resources on reentry to deter repeat offending and reduce recidivism; and strengthening resources for violence prevention and protection of the most vulnerable populations, particularly women and youth. In the August 2013 the Smart on Crime Report, the Attorney General stressed that the

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nation cannot prosecute its way to becoming safer and that it is time to rethink the system of mass imprisonment.\(^5\)

America has the highest rate of incarceration of any nation in the world at an $80 billion cost in 2010 alone, and it is now time to pull together resources and use evidence-based strategies to reign in the disturbing rates of recidivism by those who reenter the community. As part of the *Smart on Crime* initiative, DOJ called on U.S. Attorneys to designate prevention/reentry coordinators to focus on crime prevention and reentry, and the department worked with the ABA to publish the catalogue of over 38,000 collateral consequences laws it documented at the state and federal levels.

As part of the *Smart on Crime* initiative the Federal Interagency Reentry Council, convened by the Administration in 2011, published fact sheets on reentry, titled “Myth Busters,” to clarify federal policies affecting formerly-incarcerated individuals and their families regarding public housing, parental rights, employment, food benefits and other areas. DOJ components will be required to factor the collateral consequences in their rulemaking, and if they are determined to be burdensome and not serving some public safety purpose then they must be narrowly construed or eliminated.\(^6\)

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\(^6\) Myth Busters should be included in each inmate’s reentry plan at all levels, incorporated into probation and reentry staff training, included as part of prosecutor and criminal defense training and required training for judicial officers and made available to all local, state and federal agencies for review and consideration in their rulemaking functions. ([https://www.usich.gov/resources/uploads/asset_library/REENTRY_MYTHBUSTERS.pdf](https://www.usich.gov/resources/uploads/asset_library/REENTRY_MYTHBUSTERS.pdf))
Another major focus of the *Smart on Crime* initiative is a disruption of the school to prison pipeline that entraps too many boys and young men of color. The Attorney General and the Secretary of Education issued guidelines in January 2014 on school discipline to end the excessive rates of suspension of Black and Hispanic students. They have urged school districts to end zero-tolerance policies that result in excessive rates of suspensions, expulsions and arrests of Black and Hispanic students, and they have opined that racial discrimination in school discipline raises concerns of violations of federal civil rights laws.\(^7\) In June 2014 they sent a joint letter to state school officers and attorneys general urging them to ensure that incarcerated youth get high-quality educational services to meet their needs, and they announced strategies to address the educational needs of incarcerated adults and those returning home.\(^8\) Both agencies supported a 2013 RAND Corporation report that documented cost savings and recidivism reductions through investment in inmate education programs and vocational training, while noting that no more than half of all inmates nationwide receive any kind of instruction.\(^9\)

### III

It is well-documented that Black and Hispanic students attend school in urban districts that have failed to provide them with equal educational opportunity and that all too frequently have imposed disparate disciplinary policies against the students. Studies have shown varying percentages for school dropout rates for Black and Hispanic students estimated at 50% and higher.


in some areas, and Black and Hispanic male students graduate at substantially lower rates than their White peers. To address these and other issues, President Obama issued an Executive Order in 2012 to launch a White House Initiative on Educational Excellence for African Americans\textsuperscript{10} and in 2010 he recommitted the White House Initiative on Educational Excellence for Hispanics.\textsuperscript{11} The goal is to strengthen this country by improving educational outcomes for Blacks and Hispanics and to help ensure their preparation for college and productive careers and lives. The President Obama readily acknowledged that obstacles to equal educational opportunity still remain in the nation’s educational systems, despite the 1954 decision in \textit{Brown v. Board of Education} mandating educational equity.

The Executive Orders can be reviewed online, but it is worth quoting one of the objectives here: “reducing the dropout rate of African American students and helping African American students graduate from high school prepared for college and a career, in part by promoting a positive school climate that does not rely on methods that result in disparate use of disciplinary tools, and by supporting effective and innovative dropout prevention and recovery strategies that better engage African American youths in their learning, help them catch up academically and provide those who left the educational system with pathways to reentry.”\textsuperscript{12}

In February 2014, President Obama launched the “My Brother’s Keeper” (MBK) Initiative as part of the effort to help boys and young men of color break the barriers they face and get ahead

\textsuperscript{10} White House Initiative on Educational Excellence for African Americans, U.S. Dept. of Education, \url{https://sites.ed.gov/whieea/}
\textsuperscript{11} White House Initiative on Educational Excellence for Hispanics, U.S. Dept. of Education, \url{https://sites.ed.gov/hispanic-initiative/}
\textsuperscript{12} See Section 2(b)(3)(vi) (2012 order/African Americans); Section 2(d)(v) (2010 order/Hispanics).
in life.\textsuperscript{13} In its May 2014 Report, the MBK Task Force (Cabinet Members) recommended corrective actions after finding, \textit{inter alia}, that over 1 million young people drop out of school each year and that a disproportionate number are boys and young men of color.\textsuperscript{14} Further, in 2012 Black males were 6 times more likely to be incarcerated than White males and Hispanic males were 2-1/2 times more likely.\textsuperscript{15} Ensuring that boys and young men of color receive equal educational opportunity throughout their elementary, secondary and post-secondary education; eliminating the disparate school disciplinary policies imposed against them; providing to them high-quality and rigorous education; demanding and encouraging higher expectations of their abilities from teachers and society; directing more resources toward their retention in school and graduation; and preparing them for success in their careers and lives will strengthen these students, their families, the economy and the entire nation.

The Advisory Commissions created under the executional excellence initiatives have been holding summits and roundtable discussions around the country to hear from boys and young men of color about challenges they face trying to get ahead in life. Some have expressed growing up without role models or having adults to encourage them to stay in school, attending schools fail to value their abilities or facing a society that too readily discriminates against them based on race. Their voices are crucial in this effort to change the course and projection of their lives and of this nation.

\textsuperscript{13} My Brother’s Keeper (MKB), The White House, \url{https://obamawhitehouse.archives.gov/node/279811}

\textsuperscript{14} My Brother’s Keeper Task Force Report to the President, May 2014, \url{https://obamawhitehouse.archives.gov/sites/default/files/docs/053014_mbk_report.pdf}

IV

President Obama’s educational excellence initiatives offer a new direction for the nation. Heeding the call of this Administration and working together to change conditions that boys and young men of color face throughout this nation will produce positive and long-lasting outcomes for the entire society. It takes collective and sustained efforts to reverse school dropout rates for boys and young men of color that create the consequence of them being 6 times more likely to be imprisoned than their White peers. The nation must disrupt the school-to-prison pipeline to save their lives; to promote their future productivity and success; to build more stable families and communities; to strengthen the economy; to save money on prisons and instead divert those savings to build more schools and provide a thorough system of public education; and of course to promote public safety.

Collective efforts to change the course and direction of the lives of boys and young men of color is gaining momentum and in some unexpected but laudable ways. In 2012, the Black and Hispanic lifer inmates at Graterford Prison started a program known as “F.A.C.T.,” or “Fathers and Children Together,” which was created to reconnect fathers (and some grandfathers) with their children to prevent them from “following [their fathers’] footsteps into prison.” The inmates intend to help break down the intergenerational impacts of mass incarceration and the school to prison pipeline that engulfs far too many children from their communities. They recognize that children having an incarcerated parent increases their likelihood of growing up and becoming

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involved in the criminal justice system. A 2010 Pew Charitable Trust study found that 2.7 million children under 18 had a parent behind bars as of 2008, and because a majority of the individuals behind bars are men a majority of these children lacked a father in their lives. Further, the racial concentration of incarceration rates extends, as well, to the incarcerated parents.¹⁷

Through their “Education over Incarceration” campaign, the inmates hope to encourage young people to stay in school, get an education and avoid a life of crime. They even provide inmate-funded scholarships for students.¹⁸ Most important, the lifer inmates’ program operates with support of the Corrections Secretary, and it is anticipated that this program will produce positive educational outcomes and impacts for the children involved.

Other collaborations are underway, including faith-based educational initiatives in Pennsylvania and elsewhere that promise to offer rigorous after-school literacy and informal STEM education programs, to promote school attendance strategies and to recruit mentors for boys and young men of color. On the legislative front, a bipartisan Pennsylvania Senate/House “At Risk Children & Families Caucus” was created in 2014 to explore issues around truancy and dropout and other risks facing children and families. The caucus investigates and examines evidence-based prevention strategies and is expected to recommend ways to address some of these very important issues.¹⁹

¹⁸ Fathers and Children Together, www.fathersandchildrentogether.org
CONCLUSION

Boys and young men of color, and indeed all young people, must be encouraged at every stage of their lives to work hard, to make right choices, to choose success over failure, to choose an education and to stay in school. If this were a national priority, some of the $80 billion spent in 2010 on corrections costs could have been more wisely spent by diverting resources to prevent millions of school student dropouts across the nation. Enough data and analysis on topics of prisons and educational opportunity now exists to answer the question posed. The path forward just might become clearer in solving a major 21st Century criminal justice issue, once it becomes engrained that the education of all children, and on equal terms, is one of the best crime prevention strategies at hand.