

Abstract

At almost 90% white, the practicing bar is critically out of touch with the changing demographics of the nation. But the bar can only be as diverse as the students who approach and successfully pass through the law school gates to the profession. While minority enrollment overall has increased in law schools, enrollment of black, Hispanic, and American Indian/Alaskan Natives (the so-called underrepresented minorities) is flat or decreasing. Despite decades of task force studies, reports, and summits, the bar has not found an approach to change these numbers in a meaningful way; indeed the American Bar Association (ABA) itself reports that “the proportion of minorities in the legal profession is not likely to attain parity with that in the general population in the foreseeable future.” (American Bar Association, Leadership, Office of Diversity Initiatives, <http://www.abanet.org/leadership/diversity.html>.) As is, diverse students approaching the law school gates from now until 2028 (the twenty-five year window Justice O’Connor offers in the *Grutter* decision) *will not be sufficient* to make such improvements in diversity possible.

While the root problem lies in the educational system, it is a problem compounded for the profession by its own approach, an approach characterized by gratifying, but often isolated, short-term diversity initiatives or programs. This approach has not fully acknowledged how daunting the numbers are, not fully acknowledged the significance of the deficits in the education pipeline—that is, the journey from kindergarten to law school and the profession—and has not responded with action in any way even approaching a coordinated, focused, or sustained effort.

A significant widening of the educational pipeline, and thus an increase in the qualified applicant pool approaching the law school gates, requires putting the walk with the talk with new and sharpened attention. Other major American institutions—the U.S. Army for example—have understood and used such a focus. And the work of law’s sister professions—the health professions for example—also illustrates the kind of pipeline work that needs to be accomplished. Some extant law pipeline programs also offer successful and replicable pipeline approaches.

Research shows that potential for success in improving diversity lies in a focus on what the Gates Foundation has called the new 3Rs—rigor, relevance, and relationships. Not now accessible to all students, in significant part, the missing 3Rs underlie the achievement gap and the narrowing of the educational pipeline well before the law school gates. At the same time, these 3Rs are areas where the law community has proven experience and expertise, areas where the law community is particularly well suited for work that can significantly repair and widen the educational pipeline, thus expanding the number of diverse students gaining admission to law school.

In the context of such research, this book approaches a deeper understanding of the issues that confront the education pipeline P20 (preschool to the profession), as well as of the issues that seem to plague the bar’s diversity efforts. Chapters 1 and 2 introduce the diversity issues confronting the legal profession, including a recap of the relevant diversity data; Chapters 3 and 4 review the educational research, including a

focus on core inequities, particularly in delivery of the new 3Rs; Chapters 5 and 6 consider the history of some of the leading work on the pipeline for lessons going forward, including a recognition of areas where the law community brings real strengths and distinctive values to the pipeline; Chapters 7 and 8 outline a continuum of pipeline programs concluding with an overview of elements essential for success in repairing the educational pathway to law careers. The Appendix then highlights select replicable programs with demonstrated records of accomplishment.

This book is the first in an intended series. The next book, *Diversity Realized: Pipeline Programs that Work to Increase Diversity in Law*, will build on the programs enumerated in the Appendix on Select 7 – Programs to Replicate and provide detailed operational descriptions of successful pipeline programs with information on outcomes and replication. The series will continue with additional hands-on materials for law-themed work.

Forewords

Robert J. Grey, Jr.

Diversity Realized Putting the Walk with the Talk for Diversity in the Legal Profession is a call to action, from an educator and a member of the bar. Our profession has been striving to attain diversity among its ranks because we understand the benefits of diversity for our clients and ourselves, but, as Redfield shows, the bar has not yet realized diversity.

Diversity Realized explains how race conscious law school admissions of the kind approved by the Supreme Court in *Grutter v. Bollinger* are not nearly enough to achieve diversity because the problem is not the applicants to law school, it is the educational system that precedes the law school applications. As Redfield thoughtfully details, the educational pipeline to law school as it currently stands does not serve underrepresented minority students well enough, with students getting lost on the path to higher education, which prevents them from ever becoming members of a profession. Redfield explains that the only way to truly achieve diversity in the profession is to transform the educational pipeline that produces future law students.

Redfield illustrates how underrepresented minority students are underperforming from first grade through high school and college, not because they are not capable of doing better, but because of the constraints of poverty and low expectations. As the pages of *Diversity Realized* reveal, when educators expect little of children, they tend to meet those low expectations and don't push themselves any further. For legal professionals seeking to diversify the bar, our task becomes clear as we read *Diversity Realized*: we need to provide role models, mentoring and other forms of involvement to encourage underrepresented minority students to break free from the constraints of their environment to rise and meet our expectations for them—to help change the landscape of the legal profession.

Redfield does more than sound the alarm alerting our profession that our current efforts toward realizing diversity are inadequate, she shows us how to change our approach, based on the success of programs in our sister professions. Redfield

spotlights those programs that have worked for the U.S. Army, for the medical profession, and those programs currently in place by law schools and members of the bar working to engage at risk students in the law through creative and non-traditional educational initiatives. Redfield shows us that to affect meaningful change in our profession we must be involved in the educational system in which underrepresented minorities are learning. We must re-focus the efforts of the bar and law schools into mentoring, and piloting unique educational programs designed to show these students all that they can achieve, and why they should want to achieve it.

The kinds of programs Redfield advocates will ensure that tokenism is once and for all a thing of the past. If Redfield's recommendations are put into action and we work as a profession to transform the educational pipeline, minority law students will know they are there because they earned the spot in the class.

By participating in the transformation of the education underrepresented minority students receive, we can ensure that those students who want to join our profession but think they can't, are given every opportunity to do so. By mentoring these underrepresented minority students we can show those among them who don't know what or who they want to be, that practicing law is not only worth wanting, it is one of the most important and desirable choices they can make.

This book should be read by every member of the bar who understands that diversity in the profession is being demanded by clients who want quality representation. As Redfield artfully explains, we must change the way our young people are educated from the bottom up, so that we can realize a truly diverse profession.

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H. Thomas Wells, Jr.

I first met Sarah Redfield at a Wingspread conference in Fort Worth, Texas early in my year as President-Elect of the American Bar Association. Wingspread, a consortium of educators, administrators, judges, bar associations, lawyers, law schools and students, has been in operation since 2004, devoted to improving diversity in the “pipeline” to the legal profession. Sarah has been involved in Wingspread since its inception in 2004. The thing that most impressed me about Sarah was her unwavering dedication to the ultimate goal of making the legal profession look more like the society it is called upon to serve. At the time, I was traveling around the country, listening and learning, hoping to find ideas and programs that would inform my upcoming year as ABA President. I certainly found both at Wingspread, and in Sarah. Indeed, largely through the inspiration of Wingspread, one of the Presidential initiatives embarked upon during my 2008-2009 year as ABA President was to convene a National Summit on Diversity in the Legal Profession in June 2009, making diversity one of the important prerogatives of my bar year.

As noted by many at the National Summit, numbers are important when one is discussing diversity. We cannot track any progress unless we know where we are. If you do not know where you are coming from, how can you know where you are going? The theme of the National Summit on Diversity in the Legal Profession was “Next Steps?” But in order to take the next steps, one must understand the current landscape. Part of that landscape, indeed, a very important part, is the “pipeline” to the legal profession, often starting long before college. Thus, I was extremely gladdened by the news that Sarah had decided to collect and expand her thoughts on the educational pipeline to the legal profession into *Diversity Realized: Putting the Walk with the Talk for Diversity in the Legal Profession*.

Her emphasis on the “new 3Rs” (Rigor, Relevance and Relationships), as well as her analysis of the history of the pipeline in the law and in other professions, and her review and assessment of pipeline programs, lead to valuable conclusions which we all hope will result in a pipeline to the profession that is diverse, open, accessible and robust.

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A note about the author: Sarah Redfield is a member of the Maine bar. She is currently Professor of Law at Franklin Pierce Law Center in Concord, NH, which supported this work, as did the University of the Pacific and McGeorge School of Law where she was a Visiting University Professor & Professor of Law from 2004 to 2008.

An expert in education law, Professor Redfield is involved with a variety of diversity activities including serving as a Member of the American Bar Association (ABA) Presidential Advisory Council on Diversity (ACD) and chair of its Education Committee; a Member of the State Bar of California's Council on Access and Fairness and member of its Early Pipeline and US News & World Report subcommittees; an organizer of the Wingspread P20 Consortium; Chair of the Education Law Conference; a member of CLEO's Board of Directors; a member of the University of California at Irvine Saturday Academy of Law's Oversight and Curriculum Committees; and a Gubernatorial-Appointed Member of the Education Commission of the States and Elected Member of its Steering Committee.