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## RECRUITMENT AND RETENTION OF THE AFRICAN AMERICAN LAW STUDENT\*

CHERYL E. AMANA†

We need not “let color blindness become myopia which masks the reality that many ‘created equal’ have been treated within our lifetimes as inferior both by the law and by their fellow citizens.”<sup>1</sup>

### INTRODUCTION

In 1869, George Lewis Ruffin became the first African American to graduate from an American law school.<sup>2</sup> Even with this relatively early entrance, compared to other minorities, African Americans historically still have been underrepresented in the legal profession. For at least the last twenty years both the Bar and most law schools have recognized this as a problem and have sought to remedy it through a variety of responses.<sup>3</sup> Yet, we find ourselves facing the twenty-first century with the percentage of African American law students leveling at 5.2% and in

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\* While I have focused this essay on the African American law student, much of the discussion and many of the recommendations will apply equally to other minority law students especially the Hispanic and Native American. The term “minorities” presently encompasses Alaskan Natives, African Americans, Asian Americans, Hispanics (Mexicans, Puerto Ricans and others), Native Americans and Pacific Islanders.

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1. This essay grew out of a paper which was submitted in partial fulfillment of the requirements for a seminar in legal education taken while completing my residency requirements as a J.S.D. candidate at Columbia University School of Law. I am particularly grateful for the insightful comments and support of Professors Peter Strauss, Kent Greenawalt, Kellis Parker and Walter Gellhorn. Additional special thanks to Dean Mary Wright and Professor Finesse Couch for reading and rereading my drafts. It should be noted, however, that this is not meant to be a piece of scholarship in the conventional sense, but rather a piece that offers suggestions and provides some insight into a problem of particular concern to African Americans in many fields. All views expressed are my own.

2. Although at least four other African Americans preceded Attorney Ruffin to the Bar, their admission was based on reading the law in a law office rather than on attending law school. See Brown, *The Genesis of the Negro Lawyer in New England*, 22 NEGRO HIST. BULL. 147, 171-72 (1958).

3. In 1936, the University of Maryland was ordered to admit “Negroes” on a nondiscriminatory basis and did so sparingly. *University of Maryland v. Murray*, 169 Md. 478, 182 A. 590 (1936). In *Sweatt v. Painter*, 339 U.S. 629 (1950) the Supreme Court mandated admission of African Americans to white law schools where the state failed to provide comparable facilities, personnel and educational opportunities. However, no real effort was made by most majority law schools to actively recruit African American law students until the late sixties and early seventies. See the discussion of the role of the historically Black law schools, part IV *infra*.

serious danger of declining.<sup>4</sup> This essay is written based on the premise that diversity in legal education is an appropriate and compelling goal. It recognizes efforts made toward that goal during the past two decades, but also notes that if the goal is to be attained it will require a renewed commitment on the part of the law school community. The commitment must be pervasive and long term. The first part of this essay presents a brief overview of the historical context and development of affirmative recruitment and retention programs; Part II offers a paradigm for recruitment of the African American law student; Part III speaks to the fact that the success of the recruited student will require that the admitting law school have in place specific environmental and skills-related support systems; and Part IV takes note of the role that the historically Black law schools have played in this struggle and argues for continued support and recognition of these institutions.

## I.

### “THE PRESENT ENSHRINES THE PAST”<sup>5</sup>

The legal profession's legacy of past discrimination coupled with the historical racism of American society has produced a disproportionately small number of African American attorneys both in comparison to the overall number of attorneys and to the aggregate number of African Americans in the United States population.<sup>6</sup> Law schools have sought to address this problem with what I will call affirmative recruitment and retention programs. These programs are geared towards identifying, encouraging and supporting qualified minorities who will enter law school and ultimately the legal profession. It is clear that unless there can be a significant impact on the numbers of African American students entering

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4. 1989 A.B.A. Sec. Leg. Educ. and Admission to the Bar, *A Review of Legal Education in the United States, Fall, 1988* at 67-68. The number of African Americans attaining baccalaureate degrees is declining overall with a drop of 2.8% in degree attainment between 1975-76 and 1984-85. Moreover, the number of African American males obtaining baccalaureate degrees has decreased by 10.2% during that period. Law School Admissions Services, ACCESS 2000 DATA BOOK: U.S. MINORITY EDUCATIONAL ENROLLMENT: LAW SCHOOL APPLICATION, ENROLLMENT, PLACEMENT AND TEACHING PATTERNS 18 (1988) [hereinafter Access 2000 Data Book], (citing — SIXTH ANNUAL STATES REPORT ON MINORITIES IN HIGHER EDUCATION — (Wilson & Melendez, eds.) (Washington, D.C.; American Council on Education, 1987)). It is sad commentary but there are currently more African American males of college age in prisons and other penal institutions than in college.

5. Simone de Beauvoir

6. In 1970, African American lawyers represented slightly more than 1% of the total number of lawyers. Littlejohn & Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past?*, 12 T. MARSHALL L. J. 415 (1987). In 1989 only 3.4% of licensed attorneys were African Americans. See U.S. Bureau of Census, *Statistical Abstract of the United States: 1989*, 388 (109th ed. 1989). For the 1986-87 school year 81.5% of law school applicants were Caucasian, while only 7.4% were African American. See Access 2000 Data Book, *supra* note 6, at 24 quoting LSAC/LSAS National Statistical Report ABA Law School Applicant Profiles 1982-83 through 1986-87.

and completing law school there will not be an appreciable change in their representation within the profession.

The shortage of African American attorneys in addition to being exacerbated by the historical lack of concern and support by the profession, has also been negatively impacted by the attitude of some in the African American community. Professors Carl and Callahan stated twenty-five years ago that “[a]ttitudes of fear, disrespect and resignation toward the law are not a very fertile field in which to plant or to find motivation to study law or do anything else except to stay as far away from the law as possible.”<sup>7</sup> Such attitudes still tend to permeate the minds of many in the African American community. Addressing such attitudes will require some fundamental re-education and work within the community. African Americans who not only are able to complete law school and pass the Bar, but who are also committed to returning to their communities as representatives and role models who work extensively with our youth can help in this regard.

The law schools must recognize that even though they have done much, more remains to be done. A major commitment of law school resources must be earmarked for this enterprise. This essay will not seek to re-debate the propriety of affirmative recruitment and retention programs. Suffice it to say that “[o]n each side of the reverse discrimination debate are arguments of justice and utility.”<sup>8</sup> Justification for support of such programs is generally conceived of under three theories which involve notions of social utility, distributive justice and reparations. Professor Greenawalt identifies four utilitarian arguments in favor of such programs. They include: 1. increased service to minority groups; 2. professional school diversity; 3. role models for those in the minority community; and 4. elimination of negative stereotypes that inhibit minority participation in community life.<sup>9</sup> Under a distributive justice theory it is recognized that through no fault of their own, certain minority groups have not had equal access to the wealth and opportunities of the nation, that they should have access and that such access will result in benefits for all of society.<sup>10</sup> The reparation theory proposes that there has been

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7. Carl & Callahan, *Negroes and the Law*, 17 J. LEGAL ED. 250, 256 (1965).

8. K. GREENAWALT, DISCRIMINATION AND REVERSE DISCRIMINATION 52 (1983). In addition to Professor Greenawalt's well reasoned and thoughtful book, see also Bell, *Bakke, Minority Admissions and the Usual Price of Racial Remedies*, 67 CALIF. L. REV. 3 (1979); Bell, *In Defense of Minority Admissions Programs: A Response to Professor Graglia*, 119 U. PA. L. REV. 364 (1970); Redish, *Preferential Law School Admissions and the Equal Protection Clause: An Analysis of the Competing Arguments*, 22 UCLA L. REV. 343 (1974); Rosenfeld, *Affirmative Action, Justice and Equalities: A Philosophical and Constitutional Appraisal*, 46 OHIO ST. L.J. 845 (1985); Sadurski, *The Morality of Preferential Treatment (The Competing Jurisprudential and Moral Arguments)*, 14 MELBOURNE U.L. REV. 572 (1984).

9. Greenawalt, *supra* note 9, at 63.

10. See Rosenfeld, *supra* note 9, at 860.

historical racial discrimination, that such discrimination has caused harm and that specific positive action is necessary to compensate for the damage done.<sup>11</sup> Within the law school community the adoption of either theory would assist in eradicating barriers that retard the creation of African American attorneys.

## II

Professor Walter Gellhorn's statement on diversity addressed to the American Association of Law Schools nearly three decades ago is worth repeating:

Nobody wishes to change the pluralistic nature of American legal education. The capacity to innovate, the freedom to seek excellence by different means, the opportunity to reflect the special enthusiasms of faculty members, the ability to respond to locally felt needs, these are strengths that inhere in diversity.<sup>12</sup>

If we are to realize the true richness of diversity we must do a better job of nurturing potential minority attorneys in the nineties than we have done over the past decade. Even though we have increased the absolute numbers of African American law students attending law school, the percentages have remained relatively stable.<sup>13</sup> This is so despite the fact that every ABA approved law school currently has an affirmative action plan.<sup>14</sup> Any plan which seeks to increase the numbers of African American law students needs to recognize that some impact must be brought to bear on the numbers of such students prepared for, enrolled in, and completing college.<sup>15</sup> Many law schools may feel that it is beyond their resources and ability to reach these students. It is not always necessary, however, for a great deal of financial resources to be expended. Tutorial services may be provided at a local high school or middle school. Such services can be provided by law students. A faculty advisor and several law students could help organize a moot court competition between several schools or classes within a school. Visits to courts and law offices could be facilitated by law school faculty and students. The minimal costs, if any, involved with such endeavors might be underwritten by local Bars and/or law firms to the extent that a school is unable to cover

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11. See Bell, *Minority Admissions*, *supra* note 9, at 3-4; D. BELL, RACE, RACISM AND AMERICAN LAW 44-47 (2d ed. 1980).

12. Presidential Address of Walter Gellhorn to 1963 A.A.L.S. participants. Professor Gellhorn was well ahead of the times.

13. Access 2000 Data Book, *supra* note 6, at 23 notes that "the percent of minority applicants has remained stable for the past five years, with the exception of small increases among Asians and Blacks."

14. According to Memo #D8990-11 from William Powers, research lawyer for the ABA to Deans of ABA approved law schools.

15. Columbia University's Double Discovery Program and Columbia Law School's Harlem Youth Tutorial are examples of two programs seeking to address this need.

them. Such programs will require more in the nature of time than money. If the law school values such intervention by its students and faculty it is more likely to succeed.

One must not underestimate the value of tutorial services and the presentation of positive role models. While it is recognized that major changes are necessary in the education being provided by our public schools, particularly in our large urban settings, still such intervention can have an impact. It is certainly preferable for the law school to attempt some outreach at the secondary school level rather than to continue the status quo. The importance of such an effort becomes even more compelling when one considers that in 1985 only thirteen percent of African Americans and eight percent of Hispanics who graduated from high school entered college.<sup>16</sup> Contact with students could include counseling regarding what they need to do in order to attend college. It might mean something as basic as explaining that they need to prepare for and take the Scholastic Aptitude Test (S.A.T.) and letting them know what that entails.<sup>17</sup>

Many schools indicate that they undertake specific programs to enhance undergraduate recruitment of minority students.<sup>18</sup> Schools should not forget the significant numbers of African American students at the historically Black colleges. In addition to participation in on-campus law days which many schools do,<sup>19</sup> schools should also involve their African American students and The Black Law Students Association (BLSA) in their recruitment efforts, initiate personal contact with admitted students, sponsor an on-campus minority student reception for potential students, and contact African-American pre-law societies which are active on many campuses. For law schools that can afford it or can acquire funding for it, a program which grooms college juniors for law school might be an option. Such a program would provide for the students to spend time on the law school campus taking a specific class or classes from the first year curriculum along with a writing class. A minimum of two weeks is recommended. The students could be advised regarding the LSAT and the steps they might take to make their applications more competitive.<sup>20</sup>

When evaluating the African American law student applicant, it must

16. Access 2000 Data Book, *supra* note 6, at 6.

17. Although this suggestion may seem simplistic, when one considers that only 4% of students whose parents had not finished high school and 5% of students whose parents made under \$10,000 took the S.A.T. in 1987, it is one which should not be overlooked in importance. Access 2000 Data Book, *supra* note 6, at 12.

18. Law School Admissions Council, LSAC Questionnaire on Special Law School Programs for Minority Students, 45-62 (1988) [hereinafter LSAC Questionnaire].

19. One hundred and fifty three out of 171 responding schools have on campus law days, Memo, *supra* note 15.

20. Such a program might be modeled after the one at Seton Hall School of Law and described

be recognized that factors other than the predictive index or strictly objective criteria should be given substantial weight. There will probably always be some debate over the predictive accuracy of the Law School Admissions Test (LSAT).<sup>21</sup> It is certainly arguable that the test emphasizes linguistic, verbal and logical skills which are extracted from the predominantly white middle class culture. Even if we accept the fact that the law as it exists today essentially mirrors that culture, the LSAT as a predictor does not accurately measure an African American student's innate ability to acquire and refine the skills necessary to work within that system as an attorney. Moreover, it does not provide for the possibility that as increasing numbers of minorities become lawyers, judges and legislators, their impact on the law will affirmatively change it by bringing to bear changes that will more accurately reflect the pluralistic culture represented in today's society.

The LSAT also fails to recognize characteristics which can contribute to success in law school, including discipline, maturity and motivation.<sup>22</sup> The fact that continued application of predominately objective criteria will only serve to keep the Bar overwhelmingly White ought also to be recognized. It would similarly be insufficient simply to recruit and admit all African American applicants who are deemed qualified by traditional criteria. In 1986-87, for example, the average LSAT score for applicants to law school was 31. The average undergraduate grade point average (UGPA) for applicants was 3.04. In comparison, only 361 African American applicants (17%) had an LSAT score of 30 and UGPA of 3.0 or better.<sup>23</sup> None of this is meant to imply that African American law school applicants should not seek to raise their LSAT scores and UGPA. It merely acknowledges the difficulty of applying the standard admission criteria to the African American applicant.

One option to depending on objective criteria or, in the alternative, spending hours on each application in an effort to determine which applicant might be capable of success in law school, is to make use of special summer programs for evaluative purposes. The Council on Legal Educational Opportunity (CLEO) program is the grandmother of all such programs. The CLEO program is sponsored by the ABA, The AALS, the National Bar Association, The Law School Admissions Council and since 1972, the Hispanic National Bar Association. Each year since 1968, CLEO has sponsored regional summer institutes designed, among

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by Professor Brenda Hampden in her article *Preparing Undergraduate Minority Students for the Law School Experience*, 12 SETON HALL LEGIS. J. 207 (1989).

21. See, e.g., Hathaway, *The Mythical Meritocracy of Law School Admissions*, 34 J. LEGAL EDUC. 86 (1984); Simien, *The Law School Admission Test as a Barrier to Almost Twenty Years of Affirmative Action*, 12 T. MARSHALL L.J. 359 (1987).

22. Bell, *Law School Exams and Minority Group Students*, 7 BLACK L.J. 304, 307 (1981).

23. Access 2000 Data Book, *supra* note 6, at 44-53.

other things, to address the effects of the historical exclusion of economically disenfranchised persons from participation in the legal profession. Although the program is open to all disadvantaged students, the majority of the participants are minority group students.<sup>24</sup> The summer institute (including room, board and materials) is provided at no cost to participants. In addition, successful students are provided a stipend during the school year. Since CLEO's inception it has helped over 4,500 students enter 155 accredited law schools. More than 3,000 of that number have graduated from law schools and taken positions at every level of the legal profession.<sup>25</sup> The summer institutes expose the students to the legal curriculum while at the same time providing a venue by which their potential for law study can be evaluated.

For the past three summers, this author taught the writing component for a Performance Based Admission Program (PBAP) at North Carolina Central University Law School. This program was designed to identify students who have the potential to succeed in law school but whose undergraduate transcripts and LSAT scores do not meet traditional standards of admissibility.

The program emphasizes small classes, practice exams, written assignments and extensive individual review and counseling. Students are also given diagnostic tests in reading comprehension and writing. The program has proven to be a valuable tool by which to recruit not only minority students, but also students committed to the specific mission of the law school which is to recruit and train persons committed to serving communities that are underserved or underrepresented.<sup>26</sup>

It is apparent that programs in addition to CLEO are needed to facilitate the recruitment of African American law students.<sup>27</sup> Local and minority Bar associations might also consider programs aimed at recruitment and retention of the minority law student.<sup>28</sup>

24. Law School Admission Council and The Law School Admission Services, *Financing Your Law School Education* 29, 38 (1986).

25. For more information on CLEO, see Fulop, *The 1968 CLEO Summer Institutes Reports: A Summary*, 1970 U. Tol. L. Rev. 633 (1970); Slocum, *CLEO: Anatomy of Success*, 22 How. L.J. 335 (1979).

26. A full description of the PBAP program is a matter for another paper. It should be noted, however, that students from the first PBAP program graduated in 1989. Of the thirty students who attended the first summer eighteen were recommended for and subsequently enrolled in the fall 1986 first year class. At the end of the first year ten of the students were in good academic standing and three were honor students; at the end of the second year eleven of the students were in good academic standing and two were honor students. Of the seven students who graduated in May of 1989, six passed the Bar. Four students graduated in the summer or fall term of 1989.

27. For a description of special programs generally see Rosen, *Equalizing Access to Legal Education: Special Programs for Law Students Who are not Admissible by Traditional Criteria*, 1970 U. Tol. L. Rev. 321, 341-63 (1970).

28. One such program is the Charles Hamilton Houston Institute, in Washington D.C.. This institute has operated since 1979. Its summer program is designed to provide students with an introduction to the academic and psychological components of law school.

African American law school applicants should be aware that in addition to whatever efforts individual law schools make to recruit them, they must be realistic in going through the application process and in becoming cognizant of what is required in order to attain a legal education. They must take advantage of all resources available to them. They should also be familiar with the admission profiles of the schools which they are considering.<sup>29</sup>

### III

"We can build upon foundations anywhere if they are well and firmly laid."<sup>30</sup>

First and foremost when it comes to retention of the newly-recruited African American law student is the realization that in many instances these students will be in need of substantial financial support. The high cost of legal education (which could conceivably be increased by a need to complete law studies in four rather than three years), substantial debt as a result of undergraduate education, lack of family financial support and a low probability of securing positions in high paying firms and industry traditionally have posed barriers to the potential African American law student. Oftentimes these barriers have called for financial assistance which is beyond the means of some law schools. Remedying these financial burdens will require major firms, corporations, and successful alumni to rise to the challenge to provide more scholarship and employment opportunities. Further recruitment efforts of African American law students who require little or no financial aid (and there are some) should be strengthened.<sup>31</sup> This would allow all of the utilitarian benefits to accrue, while permitting the dollars committed to increasing minority enrollment to be utilized for other students or support services.

Support services necessary for the successful retention of the African American law student can be divided into two categories, environmental and skill related. Environmental supports minimize the genuine cultural differences which can prove to be extremely isolating and intimidating to the minority law student.<sup>32</sup> The law school can assist in the student's adaptation by sensitizing its faculty and staff, providing opportunities for

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29. The LSAC National Statistical Report indicates:

considerable inconsistency in the admission patterns which may indicate that candidates are not directing their applications knowledgeably, and this mal-distribution may account for the denial of many applicants who, if they had applied to a school within their credential range, may have enrolled in law school or at least enjoyed the option.

Access 2000 Data Book, *supra* note 6, at 42.

30. Ivy Compton-Burnett

31. As Professor O'Neil points out "there is great value to every additional minority lawyer who can be admitted and given a chance to practice be he rich or poor." O'Neil, *Preferential Admissions: Equalizing Access to Legal Education*, 1970 U. TOL. L. REV. 281, 317.

32. See Bell, *supra* note 22 and Skillman, *Misperceptions Which Operate As Barriers to the Edu-*

social interaction, and using mentor programs staffed both with African American students and alumni. The visibility of organizations such as BLSA and a strong minority faculty<sup>33</sup> presence is essential. Such visibility positively impacts all students. At the same time minority faculty can also help to educate other faculty to the unique needs of the minority students. Something as simple as a tour, or as elaborate as a summer orientation program can make a difference,<sup>34</sup> as the African American law student's adjustment can be traumatic regardless of how qualified the student may be.

More widely embraced should be an appreciation for law students who advocate the humanistic aspects of legal studies and practice. Recognizing and respecting a more humanistic approach will benefit not only the African American law student but all students. Law schools tend to reward the impersonal, overly logical students to the detriment of their more humanistic counterpart.

Studies indicate that "students who 'like to arrive at decisions on an analytical, impersonal, logical basis' rather than 'on the basis of appreciation, sympathy and concern for other's rights' are overrepresented in law schools."<sup>35</sup> Even if such attributes complicate the law's reputation as a rational and analytical discipline it doesn't necessarily support the reality that a lawyer may best serve his/her client by facilitating a settlement of the problem rather than by continued advocacy. The courts are overwhelmed with lawyers and clients who are disinclined to resolve their differences in a nonadversarial setting. Conceding that analytical skills will always be key to successful law study, does not mean that humanistic attributes should not also be valued.

Skills related support services are essential since some students will need specific academic support to enhance their academic performance. This support could be initiated with a summer orientation program. It would be critical, however, that it continued into the school year.

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*cation of Minority Law Students*, 20 U.S.F. L. REV. 553 (1986) which sets out seven misperceptions that hamper the education of the minority law student.

33. Studies indicate that long-term mentorship by faculty can be beneficial to the success of the African American student. Unfortunately the numbers of African Americans on law faculties are insufficient to meet the mentoring needs of current law students, let alone the increased numbers that this author would like to see. See e.g., "And Surviving in College", Wash. Post, Apr. 8, 1990, at R13; and the discussion of Jacqueline Flemming's study "Blacks in College" by E. Washington, L.A. Daily News, Feb. 9, 1987, KNT wire. See also, "UNCF, Citicorp Bank on Mentors to Aid Students", N.Y. Times, June 9, 1987, at 1B.

34. For a description of summer orientation programs currently provided in ABA approved schools, see LSAC Questionnaire *supra* note 18, at 75-87.

35. Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 248 (1974); see also Miller, *Personality Differences and Student Survival in Law School*, 19 J. LEGAL EDUC. 460 (1967); Educational Testing Service, *A Follow-Up Study of Personality Factors as Predictors for Law School Performance* (mimeograph 1967); H. PARKER & T. ERLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 30 (1972).

Schools should consider tutorial programs under the direction of second and third-year students. There also may be an appreciable number of students who need more intensive intervention by the legal writing faculty. Such programs must be carefully structured to avoid charges of stigmatism and paternalism. Sensitive instruction and criteria tailored to ensure student success will go a long way in dispelling these negative impressions. Although there has been some debate about whether such programs should be mandatory, this author favors a mandatory approach for students who have been identified as being in need. If conducted on a voluntary basis there will always be the problem of students who need the support but feel they can do it alone. Experience has shown that most do not survive on their own. Moreover, even students who initially participate in the program reluctantly, soon become involved when they realize the benefits to be derived.

At the same time, the African American student may need additional time to become acclimated to the new technologies available at most law schools today such as Lexis, Westlaw, Computer Assisted Legal Instruction (CALI), as well as basic word processing programs. Although many schools are providing exposure to computers beginning at the primary school level and certainly by the high school level, inner city and rural schools, often do not have the resources to provide such opportunities. Given the lack of exposure and the large percentage of African American students coming from these environments, academic support should continue in some manner through all three years of law school where necessary. During the third year, for example, support could be structured as an "in-house bar review".<sup>36</sup> Some students may need to take a reduced course load and complete law school in four years rather than three.

These programs should be compensatory in scope. Under no circumstances should a school consider lowering overall academic standards or using a dual grading system. Either of these responses would be devastating to the success of the support programs and to the students. The African American law student can compete in a law school environment with the proper support services. Again, it is incumbent upon the students to do their part to ensure that they are in a position to achieve. Excuses and lack of preparation can not be tolerated. Students must recognize that law study requires an intense commitment of time and energy. They should also be encouraged to help each other.

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36. North Carolina Central University Law School has conducted such a voluntary review program for its students for the past three years.

## IV

This author would be remiss if she did not mention the role the historically Black law school has played in the education of the African American attorney. This role can not be underestimated in the struggle to increase the numbers of African Americans in the legal profession. Unfortunately, many in the legal community are unaware that historically Black law schools other than Howard exist.<sup>37</sup> North Carolina Central University Law School (Durham, N.C.), Southern University Law School (Baton Rouge, La.) and Texas Southern University, Thurgood Marshall School of Law (Houston, Texas) were all founded by their respective state governments in an attempt to maintain segregation.<sup>38</sup> For years these and other historically Black law schools then in existence educated the bulk of African American attorneys. Even today, of the five law schools with the most minority enrollment, four are the existing historically Black law schools and the fifth is the University of Hawaii;<sup>39</sup> This, at a time when 61% of ABA approved law schools have nine percent or fewer total minority enrollment.<sup>40</sup> Each of the historically black law schools, in addition to competently educating minority law students, has had to struggle over the years for its existence. Within the past year, Southern University Law School barely escaped attempts by its state legislature to phase it out and its future is still not certain.

The historically Black law school must be supported not only because it is critical in terms of the education it provides, but also because it recognizes that African American law students deserve the option of attending a historically Black institution for their legal education. Professors Carl and Callahan stated:

Negroes want only to be members of a free and open society entitled to all of the benefits as well as the responsibilities of full citizenship, which include the right of choice to do whatever their inclinations, ambitions and abilities may direct. Negroes may prefer to be with their own race for fairly obvious and understandable cultural and social reasons.<sup>41</sup>

For the foreseeable future, the historically Black law school has a significant role to play in the education of the African American law student. It should be recognized and supported in that role by the legal community.

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37. Howard is undoubtedly the most well known of the four historically Black law schools in existence today. It was established in 1868 to educate freed slaves, but four of its first twelve students were White women. See R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* 81 (1983); see also *John Mercer Langston and the Training of Black Lawyers* in M. BLOOMFIELD, *AMERICAN LAWYERS IN A CHANGING SOCIETY* 302 (1976).

38. For example, Texas created Texas Southern Law School in 1947 rather than admit Herman Sweatt to the University of Texas Law School. *Sweatt v. Painter*, 339 U.S. 629 (1950).

39. Access 2000 Data Book, *supra* note 6, at 43.

40. *Id.*

41. Carl & Callahan, *supra* note 8, at 269.

### CONCLUSION

“For is it not true that human progress is but a mighty growing pattern woven together by the tenous single threads united in a common effort?”<sup>42</sup>

In this essay, many suggestions regarding how schools might improve recruitment and retention of African American law students have been provided. This is an issue of long standing and I am not the first to offer input.<sup>43</sup> Hours of legal theorizing and multiple conferences on the subject will not solve the problem. The law school community has the ability to meet this challenge; however, it will require more than lip service. Although many schools are already incorporating some of the suggestions made herein, an affirmative action plan is ineffective if there is a consistently low and static number of minority students.

We face the nineties with major underrepresentation of minorities in the legal profession. Minority lawyers are unavailable in areas where their services are most needed. They are practically nonexistent at major law firms, not to mention on law school faculties.

It is disappointing, to say the least, to see that the numbers of African American law students at many schools have not changed and in some cases have diminished since 1977 when I graduated from law school. And even where we have an increase in the numbers, the students are not satisfied. They do not feel that they are a viable part of the law school community, but rather like Harriett Tubman — “strangers in a strange land.” This issue requires mutual accommodation from all involved. The time for action is today, as we search for new solutions to these ripe issues confronting academia, practitioners and the legal community and which present challenges that may require commitment into the twenty-first century.

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42. Soong Mei-ling (Madame Chiang Kai-shek)

43. See e.g., Simien, *supra* note 22; Houston, *The Need for Negro Lawyers*, 4 J. Negro Educ. 49 (1935).