Student Body Diversity: A View from the Trenches

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ABSTRACT

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A VIEW FROM THE TRENCHES

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Although educators have stressed the value of classroom diversity for 150 years, American law schools are becoming less diverse. Total minority enrollment in ABA-approved law schools was down for the academic year 2005-2006, and the number of African Americans enrolled has reached its lowest point since 1990-1991. The ABA revised Standard 211 (renumbered 212) to require law schools to “demonstrate by concrete action” their commitment to diversity. This revision has been quite controversial, drawing opposition from those who do not believe that diversity is important.

The author, who teaches at a historically black law school with a fairly even mix of black and white students, has a different perspective from most of the diversity opponents. Using her own experiences and the insights of her students, she discusses the challenges and rewards of a diverse student body. She concludes that the rewards far outweigh the challenges and that law schools with homogenous student bodies need to be pushed out of their comfort zones by the ABA.
STUDENT BODY DIVERSITY: A VIEW FROM THE TRENCHES

ESSAY

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When the American Bar Association (ABA) announced proposed revisions to its Standards for Approval of Law Schools at the Association of American Law Schools annual meeting in January 2006 and the ABA Mid-Year Meeting in February 2006, the blogosphere exploded with commentary blasting the proposed changes as “troubling,”1 “outrageous”2 and “pernicious,”3 and an attempt by the ABA to “put [itself] above the law.”4 What so excited these commentators was the first substantive change since 1994 to Standard 211, formerly entitled “Equal Opportunity Effort,” and its formal interpretations.5 The standard, renumbered 212 and retitled “Equal Opportunity and Diversity,” was adopted by the ABA House of


3 National Review Online, Peter Kirsanow, The Diversity Trump Card: Can Law Schools Comply with the Law and Still Get Accredited (July 12, 2006, 5:36), http://article.nationalreview.com/?q=OTBmZmM3NzdmYmUzZTZhM2ViY2U3ZTljNDU5NWVmOWI=.


Delegates during the August 7-8, 2006 meeting.\(^6\) The revised standard requires law schools to “demonstrate by concrete action” a commitment to diversity.\(^7\) This much maligned rule now provides:

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.\(^8\)

The controversial new interpretations, which “provide additional guidance concerning the implementation of a particular Standard and have the same force and effect,”\(^9\) require law schools to demonstrate a commitment to diversity even if “a constitutional provision or statute purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions.”\(^10\) The interpretations further state that “[c]onsistent with” \textit{Grutter v. Bollinger},\(^11\) a law school may use race and ethnicity in its admissions process,\(^12\) and that the

\(^6\) Id. at 5.


\(^8\) Id. The revision also added a new section (b) to Standard 212, which provides: “Consistent with sound education policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.” \textit{Id.} This part of the revision has not been as controversial.

\(^9\) Id. at vii.

\(^10\) Id. at 15-16. Interpretation 212-1 provides in full: “The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school’s non-compliance with Standard 212. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 212 by means other than those prohibited by the applicable constitutional or statutory provisions.” \textit{Id.} Four states—California, Florida, Washington, and Michigan—presently prohibit the use of certain preferences in public education. Cal. Const. Art. 1, § 31 (1996); Fla. Exec. Order No. 99-281 (Nov. 9, 1999), \url{http://sun6.dms.state.fl.us/eog_new/eog/orders/1999/november/eo99-281.html}; Mich. Const. Art. 1, § 26 (2006); Wash. Rev. Code § 49.60.400 (1999).

ABA will determine whether a law school has satisfied Standard 212 by looking at the totality of the law school’s actions and the results achieved.  

A law school has a compelling interest in attaining a diverse student body, according to the Supreme Court’s holding in *Grutter.* Although Justice O’Connor listed the many positive aspects of student body diversity in *Grutter,* the critics of the revision to Standard 211 remain unconvinced. Some contend the ABA has misinterpreted *Grutter,* even “violated” *Grutter,* by taking away a school’s academic freedom to determine whether diversity is essential to its mission. Some further contend that schools should not be forced to become diverse if they do not “share that educational judgment” that diversity is essential. The opponents have gone so far as to oppose the re-recognition of the ABA’s Council of the Section of Legal Education and

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13 *Id.* Interpretation 212-2 provides in full: “Consistent with the U.S. Supreme Court’s decision in *Grutter v. Bollinger,* 539 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity. Through its admissions policies and practices, a law school shall take concrete actions to enroll a diverse student body that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.” *Id.*

14 *Grutter,* 539 U.S. at 330-332.

15 For example, one blogger identified only as “Houston Lawyer” opined on The Volokh Conspiracy that he found “completely unsupportable” the ABA’s statement that the “commitment to law school diversity represents a broad consensus expressed in legal education and higher education generally regarding the educational value of diversity in the classroom.” He added, “I do not believe that even those who support racial set asides believe them.” Posting of Houston Lawyer to The Volokh Conspiracy, [http://www.volokh.com/posts/1155058820.shtml](http://www.volokh.com/posts/1155058820.shtml) (Aug. 8, 2006, 15:13).

16 Kirsanow, *supra* note 3. The freedom to determine “who may be admitted to study” is one of the “four essential freedoms of a university,” according to Justice Frankfurter. *Sweezy v. New Hampshire,* 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring).

Admissions to the Bar as the accrediting body for American programs in legal education that lead to the first professional degree in law.¹⁸

Many of the opponents of the ABA’s diversity requirement graduated from elite schools or teach at schools with little diversity.¹⁹ I offer a different perspective. I teach at Southern University Law Center (SULC), a historically black university with one of the most diverse student bodies in the nation.²⁰ As my classes include a fairly equal mix of African American and Caucasian students, I believe my firsthand knowledge and experience gives me a better

¹⁸ The National Advisory Committee on Institutional Quality and Integrity (NACIQI) is the arm of the United States Department of Education (DOE) charged with recognizing the right of accrediting bodies to operate. United States Department of Education, National Advisory Committee on Institutional Quality and Integrity, http://www.ed.gov/about/bdscomm/list/naciqi.html (last visited Feb. 17, 2007). The DOE has recognized the ABA’s Council of the Section of Legal Education and Admissions to the Bar as an accrediting body since 1952. The ABA happened to be seeking renewal of its recognition as the accrediting agency for American law schools while this controversy was brewing. U.S. Department of Education Staff Report to the National Advisory Committee on Institutional Quality and Integrity 5 (2006) (on file with author). Twenty-seven individuals and organizations wrote the DOE opposing the ABA’s petition for renewal of recognition. Id. at 35. A NACIQI staff report was highly critical of the revised standard and its interpretations, referring to their “vague and ambiguous language,” “skeletal framework,” and “underdeveloped terms.” Id. at 18-19. After a lengthy hearing on December 4, 2006, the ABA was re-recognized as an accrediting authority, but for only for eighteen months instead of the usual five years. Transcript of Hearing at 379, National Advisory Committee on Institutional Quality and Integrity hearing on petition for renewal of recognition of American Bar Association, Council and the Accreditation Committee of the Section of Legal Education and Admissions to the Bar (Dec. 4, 2006) (on file with author). The NACIQI report has been sent to Margaret Spellings, United States Secretary of Education. The DOE has indicated through its general counsel that it will appeal NACIQI’s decision regarding the diversity standard. Valerie Strauss, Critics Say the American Bar Association’s New Criterion Promotes Racial Quotas at Law Schools, Wash. Post, Jan. 8, 2007, at A4.


²⁰ In 2006 SULC’s students were 63% African American, 35% Caucasian, and 2% others. Its student gender make-up was 52 percent male and 48 percent female. Southern University Law Center, http://www.sulc.edu/dpublic.php (last visited Oct. 12, 2006). SULC’s mission is “to provide sound legal educational training to a diverse student body, while maintaining its historic role of providing legal educational opportunities to under-represented racial, ethnic, and economic groups.” Southern University Law Center, http://www.sulc.edu/history.php (last visited Oct. 12, 2006). See also the Law School Admissions Council Official Guide to ABA-Approved Law Schools, which shows SULC with a 61.6% minority enrollment. Law School Admissions Council, http://officialguide.lsac.org/docs/cgi-bin/home.asp (last visited Feb. 18, 2007).
viewpoint to speak on the rewards and challenges of student body diversity than most of the bloggers. To gain additional information, I surveyed the forty-three first-year students in my legal analysis and writing classes on their experiences as members of a diverse student body. This essay presents a view from the trenches: my insights on teaching a diverse class, and the thoughts of my students on the positive and negative aspects of being members of a diverse student body.

First I will discuss the substantial benefits of student body diversity, as recognized in *Grutter*, from the perspectives of both professor and student. I will then address the challenges that must be faced in a diverse classroom and how those challenges can be overcome. Finally, I will discuss why action by the ABA was necessary to ensure that this country moves forward in diversifying its law schools.

**SUBSTANTIAL BENEFITS**

Student body diversity is beneficial, according to the *Grutter* court, because it helps students understand those who are different from themselves, helps break down racial stereotypes, facilitates robust classroom discussions, promotes improved learning outcomes, and better prepares students to work as professionals in and be citizens of an increasingly diverse society. William G. Bowen and Robert Bok concluded in their comprehensive study of the effects of affirmative action in American education, *The Shape of the River*, that “racial diversity does appear to bring about positive results in increasing the mutual understanding of whites and

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21 *Grutter*, 539 U.S. at 330.

22 *Id.* at 330-331,
minority students, enhancing their ability to live and work together successfully.”

My students agreed, with comments such as:

_Students from different cultures and ethnicities can share what they know and show someone who is different another way of looking at the same problem._

[After a point in time you no longer see color/race; you see friend, classmate and community. In this environment we have an opportunity to co-mingle with people of all backgrounds [and to gain] further knowledge and understanding of future co-workers/advocates._

_Diversity “helps you see through stereotypes and appreciate people for who they are as individuals, not as a group.”_

A Caucasian male student added that by being in the minority at SULC, he has gained greater empathy for minorities:

_I can see, to some degree, what my classmates must feel like outside of this campus._

Teaching a diverse group of students also allows a professor to gain a better understanding of others. Although I attended a public high school and undergraduate school with diverse student bodies, my experiences between undergraduate school and teaching at SULC were largely monocultural. There was only one African American in my law school graduating class, and when I began teaching as an adjunct at my alma mater 15 years later, minority students of any kind were still few and far between. Teaching at a school with a diverse faculty and student body has been a vastly enriching experience that has made me a better

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24 Survey administered to students at Southern University Law Center 10, Baton Rouge, La. (Sept. 20-21, 2006) (on file with author) [hereinafter Survey].

25 _Id._ at 19.

26 _Id._ at 25.

27 _Id._ at 28.

28 The student body at my high school was 50% Caucasian and 50% African American.
teacher. I must agree with the student who commented that learning about other cultures “by personally meeting people . . . is a more rewarding experience than just reading books about people’s differences.”

Robust discussion in a diverse classroom can enhance critical thinking skills when students are exposed to new ideas. Through lively discussion, students can educate each other about the differences in society. The Supreme Court noted in *Grutter* that “classroom discussion is livelier, more spirited, and simply more enlightening and interesting,” when the students have ‘the greatest possible variety of backgrounds.’ An African American student wrote, “I think diversity is good because it allows students to have a wider variety of ideas. Students from different cultures and ethnicities can share what they know and show someone who is different another way of looking at the same problem.” One of my Caucasian students agreed, stating that classroom diversity brings forth ideas “that you personally might not ever consider.”

The ABA mandates that law students receive “substantial instruction” in problem solving, legal analysis, and legal reasoning. If law professors are to teach students to think like lawyers – to analyze and solve problems by processing complex ideas and considering all the possibilities – a diverse classroom certainly contributes the development of that skill by opening

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32 *Survey, supra* note 24, at 10.

33 *Survey, supra* note 24, at 17.

34 *Standards, supra* note 7 (Standard 302(a), at 17-18.)
their minds to new perspectives. Diversity thus promotes improved learning outcomes because students who develop higher thinking skills will be more successful in law school.

A diverse student body also prepares students for the world after graduation. As one student wrote, “You’ll be practicing law in a diverse world; get used to it.”35 Students need to become culturally competent—to have a working knowledge not only of the dominant Western European culture but of other cultural traditions and to feel comfortable around people unlike themselves—in order to properly represent clients and practice in the modern world.36 Exposure to a wide variety of students is essential because the skills needed to relate to persons of different races, ethnicities, and backgrounds improve with practice.37

I found that my background, growing up in a poor rural area and attending schools with a diverse student body, helped immensely when I was engaged in an insurance defense trial practice. Many of the jurors, insureds, witnesses, and plaintiffs were African American, poor, or both, and my first trial was before an African American judge. But not only attorneys who practice in diverse communities benefit from classroom diversity. Even those attorneys who rarely come into contact with persons unlike themselves because of a specialized practice will encounter diverse clients if they take their pro bono obligations seriously.38

CHALLENGES

35 Id. at 11.


37 Janet Ward Schofield, Black and White in School: Trust. Tension, or Tolerance? 155-182 (1989) (researchers at a newly integrated middle school found that African American and Caucasian children became more friendly and willing to work with each other over time).

38 Calleros, Training, supra note 32, at 143. Mode Rule of Professional Conduct 6.1 provides that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay.” Professional Responsibility Standards, Rules & Statutes 81-82 (John S. Dzienkowski, ed., 2005).
To receive all the benefits of student body diversity, professors and students must overcome a variety of challenges. Teaching a diverse group of students does not come naturally to everyone, and professors who have never taught a diverse class may have to adjust their lesson plans and prepare to deal with any conflicts that may arise. Even though several of my students asserted that belonging to a diverse student body was a universally positive experience, my experience and research lead me to believe that optimum learning occurs in a diverse class only when professors and students are open to new ideas and sensitive to other’s feelings.

Teaching a diverse class for the first time requires some effort on the professor’s part if the professor wants to create the best learning environment for the class. But in my opinion, the extra effort is certainly worthwhile. My colleague Ollivette Mencer said, “When all is said and done, law professors want students to learn.” If we truly want students to learn, we should be willing to do whatever it takes to achieve that goal.

As will be explained below, creating the optimum learning environment involves both taking positive steps to change teaching methods and curricula and learning to avoid teaching mistakes that have a negative impact on the diverse classroom. The positive steps include designing a learning experience that takes into account the classroom diversity by accommodating varied learning styles and developing a curriculum that is relevant to the entire class, not just the majority. But in doing so, the professor must avoid both culture clash and alienating the students who are in the minority, even unintentionally, through use of stereotypes and epithets. Furthermore, the professor has to refrain from treating a minority student as a representative of a group, and he should learn to frame discussions so that the boundaries of

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39 One student wrote, “I can’t imagine that anyone could find something negative to say about having a diverse student body. It is an all around positive thing!!!” Survey, supra note 24, at 10.

acceptable responses allow minority students to introduce their views of the world into the discussion. One teaching a diverse class must also perform a self-check to ensure he does not have unreasonable expectations, nor is he making comparisons based on biases.

**Learning Style and Relevance**

Most teachers are familiar with the theory of learning styles. Simply put, different people learn things in different ways. For example, visual learners remember best what they see or read; auditory learners better comprehend what they hear. Even within a racially and culturally homogenous classroom, a variety of learning styles exist, and thus professors should try to incorporate different teaching methodologies in their classes.

Scholars are divided on whether there is a link between learning styles and particular ethnic or cultural groups, and making generalizations is troublesome. My experience, however, has been that the likelihood of varied learning styles increases in a diverse classroom. In order to achieve educational equity, a legal right established in *Brown v. Board of Education*, professors must provide all students with instructional opportunities of equal quality and status. This should mean more than teaching the same way to all students; all students should be treated with equity, parity, and comparability based on their diverse needs.

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41 Learning styles have been described as the individual ways of seeking meaning and processing information. M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 Seattle U. L. Rev. 139, 142 (2001).


46 Id.
One student noted that with “a diverse student body it may be difficult for a professor to find a teaching style that will work for everyone.”47 I have found that one teaching style does not work for everyone, even in a homogenous classroom. In a classroom with a greater mix of learning styles, an even greater variety of instructional methods is needed. Teachers should keep in mind that if they do not think consciously about using different learning styles, they will use their own preferred learning styles by default. Consequently, those professors may relate poorly to students who are unlike them.48

In addition to considering learning styles, professors should strive to create a curriculum to which students can relate. Students learn best when learning is anchored in their cultures, experiences, and perspectives.49 Ken Bain, Director of the Center for Teaching Excellence at New York University, explained that the best teachers start with something that students know, think they know, or care about.50 He notes that the Socratic Method is based on taking what people think and “gradually and systematically” wrenching them “from their familiar place.”51

Course material can be culturally relevant, personally relevant, or both. Although a professor may have included personally relevant materials in his curriculum in a homogenous classroom,52 he will need to reassess his curriculum if he begins teaching a diverse class. If the

47 Survey, supra note 24, at 15.
50 Ken Bain, What the Best College Teachers Do 110 (2004).
51 Id.
52 A personally relevant curriculum connects the students’ learning process “to who they are, what they care about, and how they perceive and know.” Raymond J. Wlodkowski & Margery B. Ginsberg, Diversity and Motivation: Culturally Responsive Teaching 112 (1995).
minority students in the class cannot relate to the curriculum – if the curriculum is based on things they do not know or care about – they may develop a negative attitude, which will affect their self-confidence and their learning outcomes.\footnote{Kimberle Williams Crenshaw, \textit{Foreword: Toward a Race-Conscious Pedagogy in Legal Education}, 4 S. Cal. Rev. L. & Women’s Stud. 33, 44 (1994). Paula Lustbader, \textit{Teach in Context: Responding to Diverse Student Voices Helps All Students Learn}, 48 J. Legal Educ. 404 (1998); Sleeter & Grant, \textit{supra} note 33, at 17.} For example, one of my African American students told me her best grade all semester was on an assignment based on a civil rights case from the 1960’s, because she was passionate about the subject. Her study partner, a Caucasian student (and a minority in the class), told me that he made his worst grade on that assignment because he had little interest in the civil rights movement. Thus, the professor should include a variety of materials in his curriculum, ensuring that at least some of the problems or hypotheses will be relevant to the minority students.\footnote{I found that writing assignments involving civil rights cases or issues engaged the African American students in my classes much more so than the Caucasian students. In the fall semester of 2006 I used a legal writing problem first developed by Kirsten Dauphinais while she taught at Howard University. Students wrote an appellate brief in a case in which all of the prospective Caucasian jurors were removed through the use of peremptory strikes, an interesting twist on \textit{Batson v. Kentucky}, 476 U.S. 79 (1986). The problem has been well received by all students.}

\textit{Culture Clash}

Even if a professor prepares for his diverse classes by developing a relevant curriculum that addresses a variety of learning styles, he still must be wary of culture clash. In a diverse classroom, a variety of attitudes, views, and ideals must co-exist. If that co-existence is not peaceable, the classroom suffers from the culture clash, which may occur either unintentionally or intentionally.

An unintentional clash may occur when a student or professor uses a term that has one meaning in his culture but quite another meaning in another’s culture.\footnote{One example is the word “trifling.” In rural northwestern Louisiana, where I grew up, trifling was an equal opportunity derogatory word; it described a person of any race who lacked serious purpose. In rural east Texas, trifling is used as a verb; a man who is trifling is having an affair, according to my relatives who live there. But to}
clash occurred at SULC during a guest lecture on passing the bar exam by an African American alumnus. The alum advised the students that a key to passing the bar exam was to “write white.” He meant that exam takers should write in standard, formal English, avoiding slang. The comment was taken, however, as a put-down of African American students, even though the speaker was African American himself.56

Students or professors may be inhibited from discussing certain issues because they are afraid their comments may be misconstrued or they may unintentionally offend. A Caucasian student who was in the minority in the classroom reported feeling “constant stress” because he worried about how the African American students would perceive his actions and attitude.57 Another Caucasian student stated that “some people are still afraid to talk about the issues.”58 Professors must recognize these tensions and create an atmosphere in which students listen to one another’s opinions and views with open minds. This can occur when the professor acknowledges that even if he disagrees with another’s perspective, that view has value.59

Unintentional culture clash may also occur if a professor uses racial epithets or racial stereotypes in the course of class discussion, for example, in a hypothet, without making it clear

some African Americans, trifling is considered a racial epithet when used by a Caucasian to describe an African American male.

56 As a result of that incident, I now begin my legal writing classes by exploring the theory of multi-lingualism with my students, adapting concepts developed by Judith Baker for use with her high school English students in Boston. See Judith Baker, Trilingualism, in The Skin That We Speak 49 (Lisa Delpit & Joanne Kilgour Dowdy, eds., 2002). I explain to my students that as college graduates, almost all of them are at least bi-dialectal in that they speak the King’s English (formal, standard English) and their “home dialect” (the dialect they grew up speaking or, in the case of students from well educated families, learned to speak once they were away from home). Baker discovered that when students know their “home” language is respected, they are more willing to learn formal English. Id. at 50, 52. Once my students realize that their Cajun or black urban or New Orleans “yat” dialect is a language that may prove useful in front of a hometown jury but is not appropriate for a federal court brief, they are more receptive to writing only in formal, academic style in law school.

57 Survey, supra note 24, at 4. At SULC, Caucasian students are in the minority in most classrooms.

58 Survey, supra note 24, at 3.

59 Calleros, Training, supra note 32, at 159.
that racism is not intended. Although an African American professor might assume that students know his use of the term “cracker” or “trailer trash” in class is not meant to offend Caucasian students, the students’ perception might be otherwise if they have not heard explicit antiracist statements by the professor. Similarly, a Caucasian criminal law professor whose hypothets frequently involve African American defendants may believe no one could possibly think he was a racist, but his students may not assume his good faith if he has never made that point clear.\footnote{Crenshaw, supra note 53, at 42.}

Culture clash may also be intentional. One student commented, “\textit{Not everyone is open to difference and change even if their presence in a diverse environment communicates otherwise.}”\footnote{Survey, supra note 24, at 7.} Some students will deliberately antagonize their classmates with comments about the other’s culture. When that occurs, the professor must control the classroom, much as a judge controls his courtroom. Charles Calleros recommends that professors “require students to refrain from the rhetorical equivalent of street fighting and to articulate their views in the civil, intellectual terms that would be appropriate in a courtroom, legislative hearing, or public meeting.”\footnote{Calleros, Training, supra note 32, at 161.} One student commented that it was “\textit{hard [for her] to understand why certain people think certain things.}”\footnote{Survey, supra note 24, at 2.} Within the limits of civil discourse, students are free to explore their classmates’ diverse viewpoints and perhaps begin to understand them.

\textbf{Poster-Child Syndrome}

Another challenge in teaching a diverse class is avoiding “poster-child syndrome,” which occurs when a student or students who are in the minority in a classroom are treated as
representatives of a group.64  A professor must not presume that a student’s race will predict his opinion on an issue. Students do not want to be treated as spokespersons for a particular group based on race, gender, or whatever other quality may set them apart, even when they pride themselves on bringing diverse perspectives to the classroom.65

The problem worsens when a class contains only one or two students belonging to a particular group.66  The professor should, for example, refrain from calling on the only African American student in the class for “the black man’s view” of a particular case.67  Kimberle Crenshaw suggests framing questions in class so that minority students can “contribute to discussions in ways that value their perspectives and do not put them on the spot.”68  She suggests, for example, that instead of asking a minority student how it feels to be harassed by the police, a better question would be whether “the unreviewability of police discretion perpetuates mistreatment of racial minorities.”69

Another suggestion is that the professor acknowledge that a variety of views exist and then invite students to share those perspectives.70  The professor may attempt to elicit participation from the minority student or group by setting forth a perspective with which he

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64 Kimberle Crenshaw refers to this treatment of minority students as “subjectification.” Crenshaw, supra note 53, at 40.

65 Calleros, Training, supra note 32, at 160.

66 At the 2006 Legal Writing Institute conference, my colleague Linda C. Fowler and I presented on the topic of cultural relevance in the legal writing curriculum. After our presentation, several professors from schools with only token diversity asked how to avoid poster-child syndrome. We had not thought this to be a problem at Southern because of the fairly even mix in the classroom. However, the student surveys indicated this was a concern of at least one of our Caucasian students, who wrote, “It can feel like your opinion is representative of your race.” Survey, supra note 24, at 1.

67 Crenshaw refers to this as “minority testifying.” Crenshaw, supra note 53, at 40 (1994).

68 Id. at 43.

69 Id.

70 Calleros, supra note 32, at 160.
thinks the minority students will agree. This usually triggers a response by members of the majority group, leading the minority students to “defend” the professor’s view.\footnote{Calleros, \textit{Training}, supra note 32, at 160.}

The problem of poster-child syndrome is exacerbated even more if the professor calls on the minority students only when a racial perspective is sought, which sends a message to the majority students that their classmate’s opinions on substantive legal issues have little value. This may occur when a professor is uncomfortable engaging the minority student or when the professor is afraid his questions or comments to the student may result in culture clash. The professor’s trepidation about engaging a minority student in discussion is quickly telegraphed to the entire class.\footnote{\begin{quote}
I am reminded of my seventh grade class in 1967 rural Louisiana. One African American student enrolled in our class through the Freedom of Choice program. None of the teachers ever called on this student, perhaps to prevent placing additional stress on a young woman who was already under a great deal of stress. The students’ impression, however, was that the teachers did not call on her because she did not know the answers. \end{quote}} This problem can be overcome only when a professor becomes comfortable with teaching a class with diverse students, which may simply take time.

\textit{Unreasonable Expectations and Comparisons}

Time and experience may eventually overcome another challenge to a diverse student body – the existence of expectations and comparisons based on preconceived notions and prejudices. One student noted that some professors expect more from one group of a diverse body, e.g., the older students or the Caucasian students.\footnote{\textit{Survey}, supra note 24, at 8.} If a professor calls on only certain students – the students the professor believes will give the answers he seeks – those students are forced to prepare more thoroughly for the class, which ultimately benefits those students who are
called on. But if the rest of the class knows they will not be challenged in class by the professor, they may prepare less thoroughly, which harms their educational experience.\(^7^4\)

Professors who have little experience teaching minority students may be influenced by misinformation quickly spread through the media. For example, opponents to the revision of Standard 211 have bandied about statistics such as, “About half of all black matriculants to law school never become lawyers”\(^7^5\) or “many law schools . . . see most of their minority students never passing the bar.”\(^7^6\) These statistics are frequently cited without attribution, as if “everyone knows” that minority students cannot succeed in law school. However, these statements bring to mind the old saying about the three levels of untruths: lies, damned lies, and statistics.

Most of these statements relate to figures in Richard Sander’s 2004 article\(^7^7\) citing the results of the LSAC National Longitudinal Bar Passage Study,\(^7^8\) which found that 43% of the African American students who began law school in 1991\(^7^9\) never became lawyers.\(^8^0\) Sander

\(^7^4\) Of course, this preference to call on the students the professor thinks will give the answer he seeks is not always provoked by prejudice. One of my professors in a second-year class called on only the law review students. Just as bad as not calling on a minority student, however, is continually calling on a minority student in an effort to embarrass him. For example, one of my professors believed that women (who were a minority in my law school in 1981) did not belong in law school. At least once a week he called on the same female student, beginning his hypothetical question: “Now Miss X, suppose you flunked out of law school and became a legal secretary.” \textit{See Louisiana Task Force on Women in the Courts, Final Report} 114-115 (1992).

\(^7^5\) Kirsanow, \textit{supra} note 3.

\(^7^6\) \textit{ABA Approves New Law School Accreditation Standard Requiring “Concrete Action” to Promote Diversity, Regardless of State Law to the Contrary,} (Aug. 9, 2006), http://taxprof.typepad.com/taxprof_blog/2006/08/aba_approves_ne.html. These opponents somehow manage to ignore information such as the Michigan Law School study that found that “almost all of Michigan Law School's minority graduates pass a bar exam and go on to have careers that appear successful by conventional measures.” David L. Chambers et al., \textit{Michigan's Minority Graduates in Practice: The River Runs Through Law School}, 25 Law & Soc. Inquiry 395, 395 (2000).


\(^7^8\) The study did not include all law schools or all students at a particular law school. \textit{See id.} at 414 n.133.

\(^7^9\) \textit{Id.} at 475.

\(^8^0\) \textit{Id.} at 454.
admits that using outdated statistics “is not ideal, and could lead to an overstatement of black-white differences.”81 He has also stated that his article does not address “all the costs and benefits of affirmative action in law schools, just some of them.”82

Sander’s methodologies and conclusions have been criticized and disputed in numerous articles,83 and it is not the purpose of this essay to assess the validity of his findings. My point is that negative information often becomes inflated and mutated into gospel truth, and even though law professors should be rational persons who look to the source of information, some will be influenced by the misinformation.84

THE NEED TO REVISE THE STANDARD

Measuring whether law schools are producing culturally competent attorneys is difficult. The classic output measure of law school success, the bar exam passage rate, does not measure the ease with which an attorney relates to persons unlike himself. The ABA has thus turned to input assessment, examining the efforts of law schools to diversify their student bodies, which is

81 Id. at 475.


84 Even Sander complained that the media misrepresented his findings: “I've been frustrated that many media reports on the article imply that I believe blacks ‘can't compete’ in law school. My data shows that the performance problem has nothing to do with race, and everything to do with preferences.” Has Affirmative Action Failed Black Law Students?, Legal Times.com (Feb. 16, 2006), http://www.law.com/jsp/dc/PubArticleDC.jsp?id=1108389917271.
more readily measured. Although a diverse student law school student body does not guarantee culturally competent attorneys, this is the likely result.

The previous version of the ABA’s diversity standard was entitled, “Equal Opportunity Effort.” But American law schools’ efforts apparently were lacking, resulting in what Professor Smith of Fordham Law School referred to as the “bleaching of the law school classroom.” The ABA notes in a diversity resource guide that more than 92% of attorneys in the United States are Caucasian and less than 8% are of color, although the population is 70% Caucasian and 30% of color. The population of the United States is becoming increasingly diverse, but for the academic year 2005-2006, the total minority enrollment in ABA-approved law schools was down and the number of African Americans enrolled reached its lowest point since 1990-1991. The ABA’s 2004 study on the progress of minorities in the legal profession reflects that “[m]inority representation in the legal profession is significantly lower than in most other

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85 See Transcript of Forum, American Bar Association Accreditation Committee Meeting, AALS Executive Committee and ABA Accreditation Policy Task Force Open Forum 42-52 (testimony of Tom Perez comparing input and output measures in social work education).


professions” and that minority entry into the legal profession has slowed since the 1980s and early 1990s.

Bowen and Bok noted in *The Shape of the River* that educators have stressed the value of classroom diversity for 150 years. If diversity is a good thing, why are law schools becoming less, rather than more, diverse? Why are some people so opposed to diversifying law schools? Perhaps the answer can be found in the response of one of my Caucasian students when asked to list one negative and one positive aspect of attending a school with a diverse student body. She wrote that the negative aspect was, “It brings you out of your comfort zone . . . .” But the positive aspect was, “It can bring you out of your comfort zone . . . and present opportunities for enlightenment.”

Law schools with homogenous student bodies are in a comfort zone. The ABA concluded law schools needed to be pushed out of that zone to prevent the continued bleaching of the law school classrooms. Under Standard 212, law schools must now commit to diversity by concrete action. My hope is that those concrete steps lead them to discover opportunities for enlightenment.

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90 Elizabeth Chambliss, Executive Summary, *Miles to Go: Progress of Minorities in the Legal Profession* 1, ABA Comm’n on Racial & Ethnic Diversity in the Legal Profession (2005), [http://www.law.harvard.edu/programs/plp/PDFs/Projects_MilesToGo.pdf](http://www.law.harvard.edu/programs/plp/PDFs/Projects_MilesToGo.pdf).

91 *Id.* at 2.

92 Bowen & Bok, *supra* note 32, at 218.

93 *Survey, supra* note 24, at 43.