

Reporting or Emoting?

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Although the *New York Times* generally deserves its status as our national “newspaper of record,” it is still capable of inept reporting on issues where the quest for impartial fact-finding conflicts with the norms of political correctness. Witness a story by Tamar Lewin in the January 7th NYT, “Law School Admissions Lag Among Minorities,” which manages to be wrong in almost every particular. Lewin reports five key claims, relying for the most part on a study by Professor Conrad Johnson of Columbia Law School: (a) the number of black and Mexican-American law school matriculants has been declining since 1993; (b) the credentials of black and Mexican-American matriculants have been improving, so that (c) these minority applicants are now “very close” in LSAT scores and undergraduate grades to white applicants. It therefore follows that (d) blacks and Mexican-Americans are being “shut out” of law school (i.e., being excluded by discriminatory practices) and that (e) law schools are keeping out minorities who would, if let in the door, become successful attorneys.

Each of these five claims is either wrong or highly misleading. Here are the facts:

a) Black and Hispanic matriculation numbers are up, not down. The number of Hispanics matriculating each year at accredited U.S. law schools has increased sharply over the past fifteen years, from an average of 2,360 in 1992-1994 to an average of 3,260 in 2006-08, according to the generally reliable statistics reported by the ABA.¹ This 38% increase is larger than the much smaller increase for “Mexican-American” matriculants (which nonetheless went up about 10% during the same period) because a

¹ Professor Johnson’s ethnic counts appear to come from statistics reported by the Law School Admissions Council (LSAC), which in turn are based on tracking LSAT takers. These statistics are necessarily incomplete, since not all law schools require all applicants to submit LSAT scores. The LSAC website, where Johnson presumably found this data, explicitly cautions readers that its racial-ethnic breakdowns for years after 2000 are not comparable with earlier years, since its methodology changed. The ABA numbers, which we rely upon, are based on reports from each school, and can be found at <http://www.abanet.org/legaled/statistics/stats.html>.

growing proportion of young Hispanic college graduates are born in the United States, and are therefore less likely to identify themselves as “Mexican”, “Puerto Rican” or “Cuban”. Black enrollment has been much flatter (around 3500 per year), but is nonetheless up about 2% in 2006-08 compared to 1992-94, according to the ABA. Since the number of law schools has increased over this period, it is true that the proportion of first-year slots going to blacks has declined some. But whites have experienced a similar proportional decline. Indeed, in a population where the numbers of Asians, Hispanics, and “Others” (e.g., multiracial and “decline to state”) are rising rapidly, it is not surprising that relative shares for whites and blacks will fall.²

b and c) The credentials of average black and Hispanic law school applicant are far below those of most white and Asian applicants, and relative improvements have been trivial since the early 1990s. On many measures of academic achievement – ranging from the reading scores of 9th graders to the entrance exam for medical schools -- black Americans as a group lag about a standard deviation behind white Americans. This is the well-known “test-score gap,” and it means that on these tests the median black is scoring at about the 16th percentile of the white distribution. The gap has historically been worse among law school applicants. Thus, in the applicant pools seeking to enter law schools in 1992, 1993, and 1994, black LSAT scores were at the 12th percentile of the white distribution, and black GPAs from college (“UGPAs”) were at the 11th percentile of whites. Black credentials have improved some since then, but nearly all the improvement is due to grade inflation in college and other factors that have affected all groups. Thus, in the 2005, 2006, and 2007 applicant pools, the median black was at the 13th percentile of the white LSAT distribution, and the 12th percentile of the white UPGA distribution. This hardly suggests meaningful “improvement” and, by no stretch of the imagination can be taken as evidence that black credentials are “very close to those of white applicants.”

² Relative enrollment shares of each racial group are documented in a recent GAO report, which can be found here: www.gao.gov/new.items/d1020.pdf. The report’s enrollment numbers are based on a third source – Department of Education IPEDS statistics – which we have not examined in detail. One puzzle that does deserve exploration is the fact that despite a substantial increase in the number of black college graduates over the past fifteen years, the number of black law school applicants with credentials comparable to the average Asian or white applicant has remained very small. For example, the number of black law school applicants with LSAT scores of 155 or higher (roughly the score of the typical successful white applicant) was 890 in the 1994 cohort and 948 in the 2007 cohort – a 7% increase – while the number of new black college graduates rose 75%.

The test-score gap has always affected Hispanics less severely, but here too the gap is large and only closing, if at all, at a glacial pace. In 1992-94, Hispanic law school applicants were at the 20th percentile of white applicants on the LSAT, and the 30th percentile of whites on UGPA. For 2005-07, the comparable numbers are the 21st percentile (LSAT) and 30th percentile (UGPA).³

d) Law schools continue to use extremely large preferences for African-Americans, and generally grant sizeable preferences for Hispanics as well. Our research group has gathered recent admissions data from dozens of public law schools across the United States. At the vast majority of these schools, black applicants at any given level of credentials have far higher probabilities of admission than do whites. Preferences for Hispanics are also very large. To draw two examples literally at random, consider the following:

Black applicants to the University at Buffalo Law School are about three and a half times as likely to be admitted as white applicants with the same LSAT and undergraduate GPA, and Hispanics are about three times as likely. These preferences are equivalent to 6.5 LSAT points or .8 undergraduate GPA points for black applicants, and 5.6 LSAT points or .7 undergraduate GPA points for Hispanic applicants. At Ohio State Law School, the preferences are much more aggressive. Black and Hispanic applicants are 24 times and 11 times, respectively, more likely to be admitted than whites with the same credentials. This translates to about 12 LSAT points for blacks, and 9 LSAT points for Hispanics.

The average minority admissions preference, taken over our entire sample of about 40 law schools, is equivalent to 9.3 LSAT points for black applicants, and 4.8 LSAT points for Hispanic applicants.

In other words, to even suggest that minorities are being “shut out” of law schools by admissions officers is absurd. At any particular level of credentials, white applicants are far more likely to be “shut out” of law schools than black and Hispanic applicants. The reason that black and Hispanic applicants are accepted at lower rates

³ These calculations all assume that the standard deviation in white credentials is 10 for the LSAT and 0.3 for UGPA (LSAC’s publicly-available reports do not report the exact standard deviations for racial subgroups). Our calculations show that the actual standard deviations are probably slightly smaller, which, if true, would mean the black and Hispanic percentiles are even lower than those reported here.

than whites in the aggregate is that affirmative action does not completely offset the persistent, troubling credentials gap affecting blacks and, to a lesser extent, Hispanics.

e) Black law applicants who do not get into any law school would have faced long odds against becoming an attorney, let alone becoming an affluent one, if they had been admitted The large preferences used by law schools mean those African-American applicants who have LSAT scores of 140 or higher and UGPAs of 2.8 or higher are almost certain to be offered admission at a law school. The implicit message of Lewin's article – certainly the message of her sources – is that law schools should be admitting more black applicants with even lower credentials. But the available data on law student outcomes for low-credentialed students strongly suggests that such admissions would be harmful for the students involved. The best available source on the long-term outcomes for a large sample of students – the Bar Passage Study conducted by the Law School Admissions Council in the 1990s – tracked some 27,000 students who started law school in 1991, including over 1800 African-Americans. The study included 301 black law school matriculants with credentials below the 2.8 UGPA and 140 LSAT threshold.⁴ Among this group, only 58 (19%) graduated from law school and passed the bar on the first attempt. An additional 32 passed the bar on later attempts—a cumulative success rate of 30%. (And keep in mind that these students, since they were admitted to a law school, probably had signs of academic promise that were thought to offset their low academic numbers.) By way of comparison, black study subjects with higher credentials became lawyers at a rate of 63%. Moreover, the low-credentialed law students who do overcome the odds and become lawyers rarely make anything close to the earnings of the average lawyer. The conclusion should be obvious: lowering admissions standards, even with the best of intentions, often does a disservice to applicants with weak incoming credentials.

The problems that law schools (and higher education more generally) should be addressing are not the absolute differences in admission rates between white and minority law school applicants, but the upstream causes of the disparity in admissions credentials, and the downstream risks of attrition and bar failure.

How did Lewin's article become so thoroughly detached from the facts? First, she relied uncritically on the report and website of Professor Johnson, which rely on

⁴ To be precise, these students had a weighted average of UGPA and LSAT equal to or lower than the 2.8 UGPA/140 LSAT combination, with UGPA weighted at 40% and LSAT weighted at 60%.

simplistic manipulation of the data most favorable to the conclusions Professor Johnson wants to draw. Second, Lewin and the New York Times apparently made no effort to check the accuracy of her numbers. Nearly all of Professor Johnson's data came from various reports of the Law School Admissions Council ("LSAC"), but LSAC explicitly warns visitors to its website not to make the sorts of comparisons Johnson made. Indeed, LSAC took the extraordinary step of sending an email to law school deans a week after Lewin's article appeared, disassociating themselves from the Johnson's study and explaining why some of the comparisons made in the study could be unreliable.

Third, the other sources cited by Lewin were not likely to provide an independent perspective. One was Margaret Barry, the co-president of the Society of American Law Teachers (SALT). SALT is not only notorious for its very vocal support of aggressive affirmative action policies; it was also a co-sponsor of Johnson's study! Lewin's other cited source is John Nussbaumer, associate dean at Thomas M. Cooley Law School and another enthusiastic proponent of more aggressive preference policies. While we don't believe that good journalism requires a reporter to give equal space to people with diametrically opposed views – the “yes, it is”, “no, it isn't” style of reporting – any journalist even a little familiar with affirmative action should know that it is an issue where passion often swamps reasoned discussion, where advocates on both sides often rely on standard catechisms rather than careful research, and where university presidents and other prominent leaders fear to tread beyond bland, supportive platitudes. In such an environment, it's particularly incumbent on a reporter to make sure that facts are checked and the conclusions really follow from the facts cited, so that the newspaper does not, as here, become an unwitting organ of propaganda.

The very unfortunate effect of Lewin's article, which this response cannot hope to undo, is that it will now be cited in dozens of discussions at law schools admissions and accreditation committees, to argue that the schools are not doing enough to foster minority admissions. While law schools may be guilty of many sins, shutting out minority applicants is certainly not one of them.