10-1-2004

Who Gets In? The Quest for Diversity After Grutter

UB Law Forum

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/ub_law_forum

Recommended Citation
Available at: https://digitalcommons.law.buffalo.edu/ub_law_forum/vol17/iss1/34

This Article is brought to you for free and open access by the Alumni Publications at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in UB Law Forum by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
Mitchell Lecture panelists explore the challenge and implications of diversity

WHO GETS IN?

THE QUEST FOR DIVERSITY AFTER GRUTTER

In law schools as elsewhere in American society, "diversity" has become a mantra. Advocates say a broad and intentional racial mix in any group, from the classroom to the boardroom, yields benefits both tangible and intangible.

The U.S. Supreme Court’s recent ruling in Grutter v. Bollinger has raised the diversity debate in law school admissions to a new level. The court held that diversity is a legitimate consideration in admissions decisions. But the court rejected the University of Michigan’s undergraduate numerical admissions scale intended to foster diversity, and left open the question of just how institutions should accomplish this goal.

That thorny debate provided the backdrop for the 2004 Mitchell Lecture, held at UB Law School on March 8. Titled "The Quest for Diversity after Grutter," the event broadened the question well beyond admissions to include such issues as how to predict who will make an effective lawyer, how to construct a truly useful diversity, and concerns about the educational process that leads up to law school.

As Dean Nils Olsen noted in introducing the program, American society itself is increasingly diverse, and experience with a wide range of people helps to ensure that new lawyers will be able to practice effectively in that society. "In actively seeking diversity," he said, "legal educators have emphasized that the presence and participation of a representative student body enriches the learning experiences and opportunities for all students."

A sampling of the five presenters’ views:

Professor Sheldon Zedeck, a psychologist with the University of California at Berkeley, described research he is conducting with law professor Marjorie M. Shultz to assess the testing of prospective law students. The research, funded by Law School Admissions Council, seeks to understand factors that predict a student’s eventual effectiveness as a lawyer – measures besides the standard Law School Admission Test.

“We think we have a reasonable idea of what makes for effectiveness as an attorney,” Zedeck said. “Now we are going to try to hypothesize what kinds of information you can collect from an undergraduate that will predict success once they are in the practice of law.”

Employing focus groups of non-practitioners, the researchers asked, “Whom would you pick for an attorney, and why?” Zedeck said that process produced 26 “effectiveness factors” pertaining to lawyering — such factors as communication skills, conflict resolution skills, networking and business development, integrity and honesty, stress management and self-development.

Next, he said, they may administer personality tests to undergraduates that measure such qualities as emotional intelligence, situational judgment and moral responsibility. It is hoped the results will clarify which qualities best predict success in law school and beyond – a useful tool for future generations of admissions officers.

Howard University law professor
Frank H. Wu spoke about the hazards of discussing diversity in the abstract, as he said the Supreme Court has done. Such a practice, he said, risks a move toward a diversity that fails to address long-standing social injustices.

For example, he said, it is possible to create a racially diverse classroom “without necessarily a lot of African-American students.” He pointed out that racial minority groups are not fungible — if we increase diversity by adding Asian-American students, that does not address the classic black-white color line. Regrettably, that is often what happens.

Even an effort to increase black representation in classes might result in the admission of large numbers of Caribbean, Haitians and Africans, he said — a fact that avoids “the particular issues that face urban inner-city impoverished African-Americans, especially young men.”

“Justice (Sandra Day) O’Connor has announced that diversity is a compelling state interest,” Wu said. “Clearly we should be interested in diversity not merely in the abstract — diversity as difference — but as to whether it might serve us in advancing the broader interest of racial equality and civil rights.”

Charles E. Daye, law professor at the University of North Carolina, Chapel Hill, paraphrased Tina Turner in asking, what’s race got to do with it?

More specifically, he asked, does racial balance contribute to true educational diversity?

“Proponents argue that racial diversity is critical to ensure diversity of perspective, experience, expectation and values,” he said. “Opponents say race is irrelevant. The problem is that neither argument is founded in science. Neither argument has any empirical study to support it.”

Daye is trying to rectify that lack.
"If we find a meaningful or strong relationship between race and diversity, the argument that race is a material factor in achieving diversity will be strengthened."

Professor Margaret E. Montoya of the University of New Mexico School of Law used her state's education system as an object lesson in the difficulties faced by racial minorities on the way to law school. As a "majority minority" state, she said, New Mexico has great numbers of Hispanic and Native American residents. Twenty percent of the population, she said, lives below the poverty line.

Montoya has researched and written about why so few Hispanics, particularly, reach the doctoral level in their education. Her special research interest is in the question of how to integrate the different levels of education in New Mexico, from grade school right on up to law school, to reduce the dropout rate and get more young people into graduate schools.

"Our approach is a long-term, systemic one," Montoya said. "We intend to make changes all along this pipeline, and we understand that we might in fact have success with only a small number of students. But we feel confident that we will have a better-integrated system, one that is also more just and one in which...

Continued from Page 59

with research into five "diversity construct areas" among students: family background, experience, perspective, educational expectations, and career goals and aspirations. By tying these constructs together with student demographics, including race, he and his colleagues hope to "find out whether we are getting anything out of racial diversity that we would not already have."

"If we find little or no evidence of a relationship between race and diversity, then the claim that race-conscious admissions are essential will be weakened," Daye said. "If we find a meaningful or strong relationship between race and diversity, the argument that race is a material factor in achieving diversity will be strengthened.

"This is the danger of social science research. You have hypotheses, but you are not sure the data will prove your hypotheses right, so in that sense you are embarking on a dangerous quest. I am convinced enough, as an African-American, that my life would not be the same as it has been if I had been born white. And I am willing to take that chance."

From the poorest state in the nation,
"We are losing a significant number of African-American and Latino students in law school. Two out of every five African-Americans who start law school never get through and pass the Bar."

Affirmative action is a more expansive tool than one that is intended to secure benefits only in classrooms, and specifically law school classrooms.

The final speaker was David L. Chambers, an emeritus professor of the University of Michigan Law School. Chambers looked at the "longer timeline" extending from grade school through professional life, and noted that a narrow focus on law school admissions misses the broader problem that fewer African-Americans, Latinos and Native Americans are in the applicant pool in the first place.

"You cannot get to law school without graduating from college and graduating from high school," he said, "but there is a severe problem with both." Among students who start high school, he said, 82 percent of whites graduate; 73 percent of blacks; 61 percent of Hispanics; and only 48 percent of Mexican-Americans. "By the time high school is over," he said, "a very distressingly large number of black and Latino young men already have significant police records that not merely stand in the way of completing their education but almost everything that could happen afterwards.

"Much the same story is true at the college level: Fewer blacks and Hispanics start college, but among those who do start, even fewer finish compared with whites."

Even after admission to law school, Chambers said, three more "critical hurdles" must be passed before a student becomes a practitioner. He or she must graduate, pass the Bar exam and get a job. Minorities, he said, lag in these areas as well: "We are losing a significant number of African-American and Latino students in law school. Two out of every five African-Americans who start law school—those who we are so worried about getting in—never get through and pass the Bar."

The message, he said, is that the Grutter decision doesn't absolve legal educators from the hard work necessary to mitigate those disturbing statistics and do more to support minority students during these crucial three years.

The Mitchell lecture series, which began in 1951, was endowed by a gift from Lavinia A. Mitchell in honor of her husband, James McCormick Mitchell, an 1897 graduate of the Buffalo Law School. An edited transcript of the panelists' remarks this year will be published in the Buffalo Law Review.