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Charles A. Pinderhughes
Tufts University School of Medicine

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INCREASING MINORITY GROUP STUDENTS IN LAW SCHOOLS: THE RATIONALE AND THE CRITICAL ISSUES*

CHARLES A. PINDERHUGHES, M.D.**

THE PREMISES

Law schools have a responsibility to develop lawyers to serve the many people who are deprived of legal services. This can best be accomplished by recruiting individuals from the law-deprived ethnic groups and from the law-deprived subgroups within those ethnic groups, and ensuring that those recruited identify psychologically and emotionally with some deprived group and want to serve its members. Since economic deprivation is frequently associated with legal deprivation, financial aid should be available for those who need it. Programs ought to ensure that those recruited can maintain ties to their own or similar communities. Blacks should be recruited in large numbers and encouragement offered toward black group formation. Any activities black law students have with children and youth in legally deprived communities may heighten the morale of law students, contribute to youth development directly, and potentially increase the size of future applicant pools. Such activity also increases the legal services available in a deprived community. An initial primary focus upon blacks is recommended because of the extent and urgency of needs in this non-group, but representation of others should be included from the beginning. Those law students who become involved with a legally deprived community may involve their classmates in ways which foster greater understanding and more mutual identification between law students and people deprived of legal services. Acceptance of more applicants in law schools with a service-orientation and an identification with those deprived of legal services, along

* The concepts presented in this paper were developed at the Tufts University School of Medicine between 1967 and 1970 when the school was enlarging its minority group student enrollment. Drs. Maloney, Strauss and Krinsky of the Tufts University School of Medicine, and Mr. Octavious Rowe of the Boston Black Big Brothers Alliance, Inc., offered many very helpful suggestions.

** Associate Clinical Professor of Psychiatry and Assistant Dean for Student Affairs, Tufts University School of Medicine, Boston, Mass. A.B., Dartmouth College, 1940; M.D., Howard University, 1943.

with reinforcement of these qualities in the course of training, is the least each law school should do to increase the number of lawyers available to deprived minority groups.

THE RATIONALE

Why should the legal profession as a whole and law schools in particular have more interest in some individuals and groups than in others? Only by differentiating between those deprived of legal assistance, and those who are not, can law schools carry out their responsibility to develop legal services for those who need them. It is thoroughly appropriate to focus constructive legal programs on persons or groups who need services, and, equally, to focus first, and intensively, upon those with the greatest need. In a society in which government, economy, politics, education, rights, responsibilities, and freedom are defined and qualified by law, only those with equal access to legal services have equal freedom, opportunity, and protection. Marshalling resources to help those in greatest need does not harm others; rather, the health of the larger community and the nation is improved by these salutary discriminatory programs.

Common or similar cultural pressures have been experienced by many of the persons who have been excluded from legal services or who have had special access to them. While the identification of race, religion, national origin, caste or class may be of some help in defining a group, the psychological and emotional processes in any given individual define his relationship to a given racial, ethnic or class group. In order to identify individuals who will serve a particular group, it becomes important to develop methods of defining which individuals psychologically and emotionally identify with, accept and want to share with, and to serve that group.

While psychological and emotional identifications are the most reliable indices of attitudes toward, and behavior with, the members of any given group, these diminish in value at times of intense polarization when more primitive thinking and symbols develop.

Relatively mature psychological and emotional patterns of mutual consideration, mutual respect, affection, and sharing char-

acterized the integration movement of the early 1960's. The polarizing "white backlash" of 1965 weakened and neutralized the integration movement and converted it into an ineffectual and unrespected exercise of "conscience with power." The "white backlash," in which whites gathered power to halt integration, meant that massive resistance to integration would continue and that rights, responsibilities, freedom and access to government, the economy, politics, and education would continue to be defined in this country according to the group one represented.

The degree to which an individual accepts or rejects the racial or ethnic group whose characteristics or cultural pressures he or she shares plays a role in defining the psychological and emotional identification. Class or caste identification within a race or ethnic group further complicates the definition of deprived and disadvantaged groups. Some middle-income black families are disadvantaged or deprived; some are not. When searching for applicants who will be most apt to convey legal services to economically deprived people in the future, it is wise to recognize that impoverished applicants who strongly strive to get away from their plight, to enjoy a more comfortable life and work in more privileged circumstances, will probably have little impact upon legal deprivation among poor people.

Although multiple deprivation is common with most deprived groups, delineating each form of deprivation separately is useful. Legal deprivation defines a responsibility and task for the legal profession. Educational deprivation defines a task for educators; economic and political deprivation define a task and responsibility for institutions generally, and government in particular.

Any attempt to provide additional legal services to legally-deprived black Americans should take into account certain factors. Cultural disadvantages are of two kinds. One involves a cultural press which has served a group in an adaptive way, but has become useless or maladaptive under new circumstances. A much more devastating kind of cultural disadvantage occurs with a cultural process which has never been adaptive, has been imposed by outsiders to serve outsiders, has bonded people to outsiders rather than to one another, has included a value system which undermined self-esteem instead of supporting it, and which has programmed people toward surrender and self-defeat rather than toward mas-

tery. American slavery and segregation systems offered such a cultural press to slaves and to descendants of slaves who have passed on this most disadvantageous culture from generation to generation of blacks. In fact, American descendents of slaves comprise the only people in this country who are viewed as an ethnic group and yet have had neither a group nor a culture of their own. In order for them to function more adaptively in a society geared to the strength of groups, these descendents must form a group, and develop an adaptive culture.

The unusually severe plight of black people in the United States relates to their unique experience. Bonds between blacks were discouraged, and bonds to whites were encouraged and enforced. By bonding blacks to outsiders, rather than to each other, by training them to trust outsiders rather than each other, and by teaching them to accept the value system of outsiders rather than their own, they have been prevented from developing their own group culture. Furthermore, they are the only body of people in this country without some common language, nationality, religion, or ideological substance to hold them together. Only this body of people programs its members toward sacrifice and surrender to outsiders, and toward self-defeat. Other groups develop in their members a sense of worth and entitlement, and a value system which maintains their self-esteem; but, black people have been pressed to employ a value system which undermines their self-esteem. Black Americans with an ethnic group (*e.g.*, West Indians) tend not to be as deprived of law services as black American descendants of slaves. Those with the greatest deprivation of legal services are apt to be the most alienated, and most excluded, as well as the most deprived economically, educationally, politically, and culturally. Any program which deals with them successfully will work for other groups.

The above background, while substantively extensive and complex, encompassing the law schools and the society outside, has been presented in outline form. An attempt should be made to keep this overall context in mind as one attempts to devise a constructive, effective model for a recruitment program. In devising such a model certain critical issues deserving of consideration will emerge.

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THE CRITICAL ISSUES

Shortage of Lawyers and Failure of Law and Justice Systems

We have a shortage of lawyers in the United States and the shortage is greatest where the need is greatest. Many persons live in communities where legal services are absent, or, when present, are decidedly inferior—lacking in continuity, depersonalized, or dehumanized. In fact, there has been a general failure of law and justice systems, except for those involving persons of considerable means. This failure has been extensive, resulting in many tragic consequences in some communities where people have been socially, educationally, politically, and economically disadvantaged. The results are varying degrees of legal deprivation.

Effects of Racial, Class, and Other Group Discriminations

The racial, class, and other patterns of group discrimination in the United States have been associated with belief systems which support ideas that some groups are more worthy, more important, and more entitled to preferential treatment, and, conversely, that others have less worth and less value, and do not merit equal social, economic, political, educational, or other opportunities. Over centuries, people in the United States, as well as elsewhere in the world, have been influenced both consciously and unconsciously by these false belief systems, and have developed firmly entrenched role relationships, psychological patterns, social, economic, political, and educational systems which expressed and perpetuated all of the prejudice implicit in these false beliefs.

Many people who are products of our contrived social realities appear to give credence to the false beliefs when judged by criteria valued highly by our most powerful and influential policy makers. Unfortunately, the evidence which “proves” that black people, red people, yellow people, or “low class” white people are inferior is evidence that has been contrived and artificially produced over many generations by persons who held the false beliefs.

Insofar as these factors contribute to legal problems, law schools have a responsibility to engage in corrective programs. In fact, racism has provided this country throughout its history with a most complex, destructive, exploitative, and neglected miscarriage of justice. Those in the legal profession and law schools have

an obligation to study, correct, and prevent the destructive effects of past and present racism. Insofar as class discrimination has an impact upon legal issues, law schools have a responsibility to address these issues. In fact, the causes, management, and prevention of unjust and damaging social conditions have been long neglected legal issues.

The Differential Effects of American Slavery

Throughout centuries of slavery and segregation, racist cultural pressures in the United States have programmed blacks to do poorly in areas idealized by whites. There are reflections of this in statistics for social and economic problems, as well as in data on school performance, intelligence tests, and representation in professional, scientific, technical, political, economic, and other highly valued fields of activity. In the middle 1960's when the median income of white families was \$7,500, four-fifths of all black families were earning less than this. Black persons showed much less educational achievement than whites, and only 5.9 per cent of the professional and technical persons in the United States were black. The educational deprivation of parents over generations contributed to the educational and economic disadvantages of their children. Many black children who attended improved schools continued to develop under the negative influences in their homes, in their communities, and in the larger society. More often they would arrive at schools handicapped, and, invariably, under emotional strains at home. Higher frequency of family instability existed in black families, related, in part, to the lack of stabilizing social and cultural forces to support them. Until recently, such stabilizing forces have been systematically prevented from developing in many black communities.

For all these reasons, black people in the United States, who have been descendents of slaves, have comprised the only non-group in the country. All other persons, including black people who have come from other cultures (African, West Indian, etc.), had access to more stabilizing social forces and have been members of groups in which bonds with and trust in one another, support for self-esteem, and encouragement toward mastery were available in group context. American slavery deprived black people of comparable security.

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Problems in Delivering Legal Services

One of our most pressing national problems is the delivery of legal services to groups of people who are legally disadvantaged because we cannot persuade, entice, or otherwise induce lawyers to serve them. Black communities have been especially disadvantaged in this regard by the triad of poverty, racism, and community disorganization.

Responsible law schools should put forth every effort to develop more lawyers for legally disadvantaged groups, and to instill more positive, responsive attitudes among law and law enforcement personnel in general. This can only be done by training lawyers who would identify with the legally disadvantaged, and would return to practice among them. Although law schools across the country have attempted to respond to these problems by recruitment of more minority group applicants, there are many factors which prevent recruitment alone from significantly affecting overall problems.

First, the pool of black applicants available to law schools is quite limited. To increase the size of this pool, organized efforts are needed to develop and nurture interest in law at an early age, and to assist youths to make and implement the plans necessary to become lawyers.

Second, black law students already in training, and also the prospective black applicants, have among them many whose value orientation, interests, and aspirations make it unlikely that they will ever serve legally disadvantaged groups. Moreover, their experience in law school does little to develop or reinforce such an interest, and contrariwise does much which undermines it. Since black law students often progress along the same patterns of interest and identification existing among white lawyers. Even the student from a legally disadvantaged community may be so affected; he experiences three or four years of separation from that community, in a relatively powerful and resourceful community to which he develops new ties. Programs are needed which reduce this isolation.

Criteria for Admission to Law Schools

The criteria employed for accepting applicants for admission to law schools, in most instances, provide additional problems. The

prominence given to scholastic achievement on a competitive basis generally ensures that most of the applicants will be able to handle the scholastic requirements of law school. At the same time, these criteria employed on a competitive basis ensure that many will be selected for law school who have been programmed primarily toward personal success and self-interest with little inclination toward service or self-sacrifice, and with little identification with or understanding of deprived persons or those who "can't make it on their own." In highly competitive programs, students generally fear committing time outside of academic areas, and if they do, it may lower their academic standing.

If there were enough places in law schools to admit all applicants who had completed the required prerequisites and who demonstrated adequate scholastic aptitude to cope with a law curriculum, the number of applicants admitted could be greatly increased immediately. Because there are so many more qualified applicants than there are openings, however, law schools are forced to employ a selection process which eliminates many qualified applicants. When scholastic achievement is used as the main criterion for selecting among the applicants, those with economic or educational deprivations are apt to be eliminated although their aptitude for the practice of law may be high and their motivation to serve may be excellent. In fact, many applicants who have been busily serving others, or working to pay for their own education are unable to compile an impressive scholastic achievement record for these reasons. Yet, it is likely that more of these applicants would eventually provide law services to legally deprived people because of their personal qualities, their identifications and their experiences.

The most striking factors underlying motivation to seek entry into law school may be related to close personal association with a lawyer as a relative, or a friend, and to encouragement from family, friends, or counsellors. These factors are too often missing in law-deprived communities where there is a lack of exposure to opportunities in law, and inadequate information and counselling at all school levels. These factors, as well as institutional resistances and financial need, hinder the recruiting of students from such communities.

Black Group Formation and Ethnic Development

After the integration phase of the civil rights movement was neutralized by opposition from a massive "white backlash" in 1965, a substantial number of black people in the United States sought to improve their lot by fostering development of group formation and a value system which would reinforce self-esteem, promote a sense of self-worth, and program the group members toward mastery, as well as trust in one another. These developments now offer to many descendents of slaves additional stabilizing social forces which are comparable to those in other groups. They represent an attempt toward progress in improving the lot of groupless people in a competitive society where the strength of one's group determines the nature of one's economic, educational, political, medical and legal experience. Some problems have arisen from this group development. Finding outside the group a target of hostility, is essential to group formation. In seeking this external target blacks naturally have focused upon whites. Most blacks, unable to identify the obvious white oppression in terms of a subgroup, developed stronger counter-racist attitudes against all whites. Most whites, misperceiving and fearing the increasing strength of black groups, experienced a massive increase in their pro-white, anti-black racism, as latent and unconscious racism become manifest and conscious in the confrontation and encounter processes which developed between blacks and whites. Practically all Americans of all colors discovered something that they had previously swept under the rug; namely, that virtually everyone has false belief systems about other people, and that those with influence, resources, or power are generally reluctant and refuse to share these with others unless they identify with them as fellow group members. At present, we have an era of polarization and division. Most persons seeking a united country would arrive at unity by the imposition of the belief systems of one subgroup upon the others. We greatly need bridging and coordinating structures and processes which can move destructive competitors toward sharing.

Formation of Alliances Between Persons with Resources and Deprived People

There has been some shift in the alliance of black middle class persons away from identification with whites and middle

class values, toward identification with blacks and economically deprived people of all colors. They need more avenues and instruments for constructively expressing this changing identification. Changes of this kind, going on in blacks and whites, could spearhead even broader identification of middle income persons with the economically deprived.

Lawyers deriving income from poor persons in economically deprived communities may experience painful conflicts about exploiting others, and about sacrificing themselves or their families. Moreover, they are often exposed to demands far exceeding their capacities, thereby creating a considerable need for agents to assist them. Advanced law students, assisting with the excess demand, while learning all the time, might augment this process.

Certainly, the achievement of increased representation of minority groups in law schools will not result in any change in the legal services available to the legally disadvantaged if those increased services are not delivered to them. Thus, the goal of increased representation should be paired with the goal of increasing service to the legally disadvantaged. In addition to achieving more proportionate representation, and solving the financial aid problems, we must find ways of admitting to law schools larger numbers who identify with and will return to practice among the legally deprived. We must modify the racist, class, and other social structures in law schools and in communities which promote elite status for some and deprivation for others.

Black Students in "White" Schools

The experience of black students in primarily white law schools support the ideas described above. Any given student may experience difficulties common to students generally, but black students typically encounter additional distinct obstacles. Discussions with law students and with teaching and administrative faculty of many different law schools reveal the general nature of these difficulties.

A list of the familiar difficulties encountered by blacks in primarily white schools need no elaborate exposition. Such a list would include the subtle neglect and rejection by white students with varying degrees of exclusion from group study, as well as exclusion from word-of-mouth advice, and from orientation con-

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cerning courses and professors to choose, assignments to seek, how to prepare for certain examinations, and other expectations. In addition, there are the social difficulties, such as, very little contact with classmates outside of class and the dating or other problems relating to social and extra-curricular affairs. Some of these problems are, of course, based upon economic and cultural factors. It is notable that in primarily black schools, the white students who are in a minority experience similar problems. Other problems relate to black students encountering in others and in themselves firmly entrenched notions that their education and ability is inferior. There is a lack of faith in the ability of black students to hold their own and, for this reason, persons wanting to give help may show good will, but may get in the way. Some "help" is ineffective and some even sabotages or undermines the student's effort. The all too familiar problems of double standards of expectation and performance are also encountered, and are especially intensified in competitively oriented schools. Racial dynamics appear in practically all black-white contacts. Even the provision of financial aid to black students has an impact upon racial feeling within the school. Although financial aid may be given completely on the basis of need, white students are inclined to experience and describe feelings of encroachment upon the financial aid available to whites. Such feelings are often associated with fear of entry of more blacks.

CONCLUSION

That law schools have a responsibility to enhance and improve legal services to deprived people is obvious and urgent. In fulfilling that responsibility complex cultural, psychological, and social problems must be resolved. In order to devise a constructive and effective model for a law school recruitment and training program, the American blacks' peculiar lack of group experience, as well as their overall historical context and background, must be borne in mind.

The foregoing discussion has not attempted to furnish a concrete model which would solve all problems for all schools and for all legally deprived people. Rather, certain critical issues have been raised. Until these, and others, are considered no effective resolution can be made in the law schools and elsewhere. Once raised—and faced—the possibility exists that progress can be achieved.

