

Alarming Drop in Mexican-

by Frank DiMaria

A fundamental skill or a habit of mind for any lawyer is the ability of an individual to consider facts and issues from a number of perspectives, a skill that law schools attempt to teach in a variety of ways. Employing this habit of mind precludes individuals from thinking that the



“It sounds naive, perhaps, but I am still shocked at how far we *haven't* come and how few people realize it or care.”

Christina Quintero, student,
Columbia School of Law

way they perceive pertinent issues is the perspective used by others. “This is poison for any lawyer,” said Conrad Johnson, clinical professor of law at Columbia Law School (N.Y.).

A decent advocate understands and appreciates the way the other side looks at the facts and interprets the law. For lawyers to be persuasive, they must consider the various issues a judge might consider, Johnson added. For lawyers to learn to employ multiple perspectives and ply their trade effectively, law schools must embrace diversity.

But not all law schools are doing so. Johnson and two students at Columbia Law School have created a new Web site that documents a disturbing drop in enrollment of Mexican-American and African-American students in America’s law schools, despite the relatively constant numbers of minority applicants over the last 15 years.

Even more worrisome, according to the Web site, during that same period, Mexican-Americans and African-Americans are doing better than ever on the leading indicators that law schools use to determine admissibility, such as undergraduate grade point average and LSAT scores. In addition, the size of law school classes and the total number of law schools have increased, making room for nearly 4,000 additional students.

First-year African-American and Mexican-American enrollment has declined 8.6 percent, from a combined 3,937 in 1992 to 3,595 in 2006. These data are provided together for the first time on the new Web site (www2.law.columbia.edu/civilrights) created by Columbia Law School’s Lawyering in the Digital Age Clinic, in collaboration with the Society of American Law Teachers (SALT).

Johnson said that he had heard “anecdotally” that minorities were not represented in America’s law schools, “and I thought ‘this can’t be true; things have come too far.’”

To get to the bottom of the issue, he and current student Christina Quintero, and former student Jeffrey Penn began talking to admissions people and people of “good will” who care about these issues and want to see minorities succeed. They spoke to individuals from a number of organizations, scoured the Web for data and sifted through that data. They found year-to-year comparisons, but nothing that tracked minority representation at law schools longitudinally. While year-to-year comparisons are useful, they do not reveal the bigger picture.

“We all spent a lot of time looking at the numbers, discussing the factors that may be contributing to these devastating consequences and asking other people what they thought about the issue, through both formal interviews and informal conversations,” said Quintero.

She and the others pored over the numbers and could not believe what they were seeing. “Being in law school and working a bit in the legal profession, you certainly notice that the legal profession is not nearly as diverse as it should be, but I never thought that we had actually regressed as much as these numbers indicate. I think we are told, especially in law school, how far we have come, how much work the law has

American Law School Enrollment

done for the people. It was shocking and disheartening to realize that what may appear to happen or what happens on paper doesn't actually have the result it should.

"It sounds naive, perhaps, but I am still shocked at how far we *haven't* come and how few people realize it or care. Sadder still is the hopelessness that seems to permeate a lot of people's thinking now, with new Supreme Court decisions and a general political and social climate that doesn't seem concerned with or friendly to what so many people have been fighting for, for decades," said Quintero.

By studying the data, Johnson, Quintero and Penn hoped to see the issue in the context of factors that might affect the numbers longitudinally, such as supply of students, the demand for law school, the quality of applicants and the number of seats that are available.

Johnson said that through the data he was seeing "the striking dissonance of more Mexican-Americans in law schools in 1992 than there are today. You also see that in the context of there being 10 percent more seats and better quantitative measures on the part of that population and steady demand on that part of the population for law school seats. That is a striking result and one that I know surprises a number of people," said Johnson.

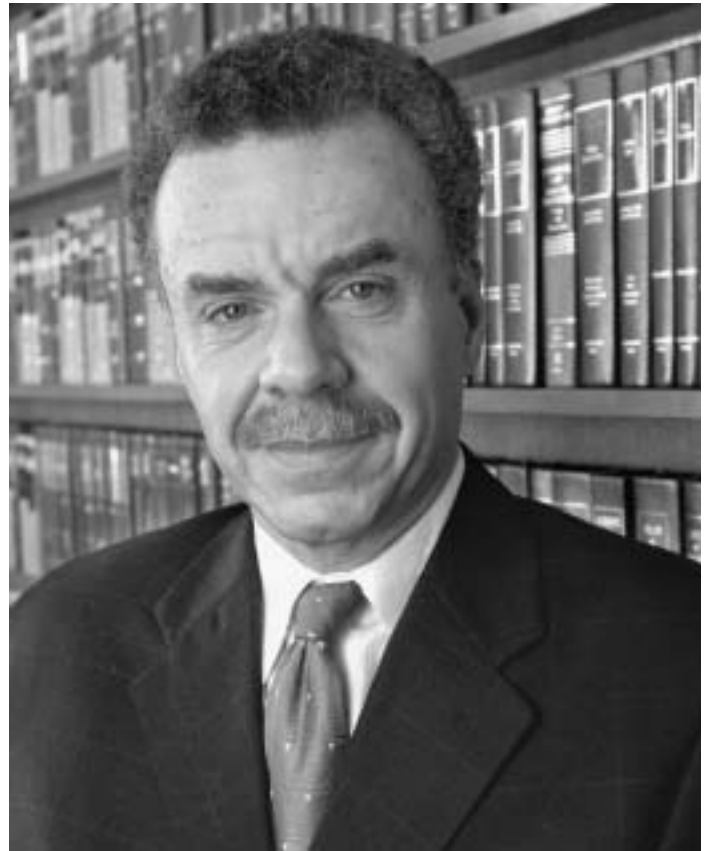
To Johnson, it's not at all an ideological issue – it's just a set of facts that are not realized widely or are not known widely. Ideologically, people argue about affirmative action and opportunity as though these issues are passé and should be removed from the social radar screen. But the numbers prove that this is an issue that must be addressed. "The problem has not gone away," said Johnson.

Concerning affirmative action, the Web site includes an analysis of the 2003 U.S. Supreme Court decision written by then-Justice Sandra Day O'Connor in *Grutter v. Bollinger*, which reaffirmed the limited use of affirmative action in university and law school admissions. In this, the most significant affirmative action case in a generation, the Supreme Court found that "student body diversity is a compelling state interest that can justify the use of race in university admissions."

Paula Johnson, a SALT board member and professor at Syracuse University College of Law, prepared the analysis of the *Grutter* case, which was one of the most important decisions on affirmative action in higher education in a generation. It was the first time since *Regents of University of California v. Bakke*, in 1978, that the U.S. Supreme Court considered a constitutional challenge to race-conscious admissions policies at institutions of higher education. In *Grutter v. Bollinger* and *Gratz v. Bollinger*, the Supreme Court reaffirmed the constitutionality of the consideration of race and ethnicity in university and law school admissions decisions, according to the Web site.

Grutter v. Bollinger and *Gratz v. Bollinger* were class-action lawsuits in which White applicants claimed they were denied admission to the University of Michigan Law School and undergraduate program, respec-

tively, because the university unconstitutionally used race as a predominant factor in admissions decisions. The claimants alleged violations under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the



Through data, Johnson sees "The striking dissonance of more Mexican-Americans in law schools in 1992 than there are today."

Conrad Johnson, clinical professor of law, Columbia Law School

Civil Rights Act of 1964.

The court rejected the argument that consideration of race in the admission decision was unconstitutional. Instead, the court adopted Justice Powell's pivotal plurality opinion in *Bakke*, in which diversity in higher education was found to constitute a compelling state interest.

In addition to Johnson's analysis of *Grutter*, the Web site presents a number of best practices taken from the 2004 publication *Preserving Diversity in Higher Education: A Manual on Admissions Policies and Procedures after the University of Michigan Decisions*. Written by attorneys from the law firms Bingham McCutchen LLP, Morrison & Foerster LLP, and Heller Ehrman White & McAuliffe LLP, the manual has become a tool for admissions officers, general counsel and others involved in crafting admissions policies. It provides a clear, comprehensive legal interpretation

Quintero acknowledged that there is no simple solution or single way to solve the problem, but she feels strongly about redefining student merit, rethinking the LSATs, and dismantling those ranking systems that seem to be ubiquitous in the profession of law.

Johnson agreed and said that admissions officers should evaluate the entire individual – the most important best practice and one that not every school employs. According to Johnson, some law schools – Columbia being one – have the correct approach when it comes to admissions. Others do not. Some schools, for example, take shortcuts and employ automatic cutoffs. One of those shortcuts to which Johnson is referring involves an improper use of the LSAT.

Johnson said that even the Law Schools Admissions Council, which administers the LSAT, indicates that the test is only a rough predictor of

Currently, one in three people in the U.S. is non-White, and 89.2 percent of the country's lawyers are White.

of the Supreme Court decisions to help universities and law schools around the country as they redraft their policies to comply with the 2003 high court rulings.

Those admissions practices that the Web site considers constitutional are: assigning a "plus" to the race of a candidate when it contributes to the diversity of the class; weighing race as heavily as – or even more heavily than – other qualities if it contributes to the diversity of the class (but not so much as to guarantee admission); considering race after weighing several additional qualities of the candidate, as long as the consideration of race does not guarantee admission; striving for a flexible "critical mass" or variable goal of admitted minorities; conducting a full comparison of the candidate's qualities – including his or her race – with those of other candidates; and keeping and referring to the demographic composition of the admitted class to evaluate the status of goals or critical masses.

Those admissions practices that are not considered constitutional, according to the best practices listed on the Web site are: always giving a "plus" to a candidate's race with no consideration of how it contributes to diversity; weighing race, regardless of whether it contributes to the diversity of the class; basing a decision on race without any consideration or assessment of other qualities of the candidate; basing admissions decisions on attaining a predetermined, rigid number of minorities; insulating a candidate based on his or her race and making an admissions decision without comparison to the general applicant pool; and relying on the demographic composition of the admitted class to determine whether a particular student is admitted or rejected.

As part of their research, Quintero, Johnson and Penn hoped to determine not only who else was talking about this issue, but *how* people were combating it, especially as they explored those strategies that were successful.

"One of our goals was to show that perhaps the way in which people had been thinking about diversity in higher education was a little misguided and that alternative methodologies need to be implemented in order to achieve a more successful result," said Quintero.

first-year success and does not predict success as a lawyer, success in later years or even intelligence. Johnson urges admissions officers to view LSAT scores within a range. For example, a score of 150 can be viewed in a seven-point range on either side.

"You could have gotten a 157 on the test or a 143," said Johnson. This is why hard cutoffs put students, and especially minority students, at a distinct disadvantage. But some law schools still employ them and refuse to consider any student who scores below a given score.

"Even the makers of the exam would say, 'that's an improper use of our numbers,'" said Johnson.

The LSAT, Johnson pointed out, is just one indicator of the many attributes an individual must possess to be a successful lawyer. Good GPAs, an individual's ability to overcome circumstances, set goals, take the initiative, and work with a variety of personalities are other attributes that contribute greatly to the success of attorneys. These, though, are not tested on the LSAT. So evaluating the entire individual is the best approach for the admissions office.

Today's lawyer deals with not only a domestic population that is becoming increasingly non-White but also an international community that comprises a variety of views, making it important for individuals to understand the perspectives and cultural differences that others bring to the table and work effectively with those individuals "to get past the stereotypes," said Johnson.

Currently, one in three people in the U.S. is non-White. In an increasingly globalized legal economy, the idea that 89.2 percent of the country's lawyers are White is a limiting factor and one that does not serve the public well, according to Johnson. "Too many people are talking to too many people who are just like themselves," Johnson said.

Johnson has not tracked the career paths of the many minority members who had aspirations of being lawyers but were never given that opportunity. But, he said, it's the profession's loss and the public's loss as consumers of the profession.

